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IMPEACHMENT TRIAL

—OF—

DAVID BUTLER

GOVERNOR OF NEBRASKA,

AT LINCOLN.

*March, May and June, 1871.*

OMAHA :  
TRIBUNE STEAM BOOK AND JOB PRINTING HOUSE.  
1871.



Nebraska History. 1871  
Butler (David)

**IMPEACHMENT TRIAL**

**OF**

**DAVID BUTLER,**

**GOVERNOR OF NEBRASKA,**

**AT LINCOLN.**

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**MESSRS. BELL, HALL AND BROWN,**  
**OFFICIAL REPORTERS.**

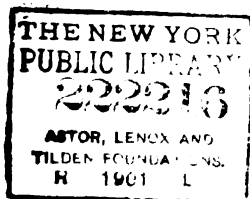
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Nebraska House Representatives.

**OMAHA :**  
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ARTICLES OF IMPEACHMENT,  
ANSWER AND REPLICATION.

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PART I.

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**MANAGERS OF IMPEACHMENT.**

**HON. J. C. MYERS,  
HON. J. E. DOOM,  
HON. HENRY HUDSON,  
HON. DEFOREST PORTER.**

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**COUNSEL FOR MANAGERS.**

**HON. EXPERIENCE ESTABROOK.**

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**COUNSEL FOR THE RESPONDENT.**

**HON. J. I. REDICK,  
HON. CLINTON BRIGGS,  
HON. T. M. MARQUETTE.**

# ARTICLES OF IMPEACHMENT.

## ARTICLES

**Exhibited by the House of Representatives of the State of Nebraska, in the name of themselves, and all the people of the State of Nebraska, against David Butler, Governor of the State of Nebraska, in maintenance and support of their impeachment against him, for misdemeanors in office.**

### ARTICLE I.

That David Butler, Governor of the State of Nebraska, being authorized, and directed, by joint Memorial and Resolution of the Legislature of the State of Nebraska, in the following words, to-wit:

"Joint Memorial and Resolution to Congress, asking for five per cent. on the sales of the public lands.

WHEREAS, There is donated to the State of Nebraska, five per cent. of the proceeds of the sale of the public lands of the United States, within said State of Nebraska, and,

WHEREAS, The same is now due to the State of Nebraska, therefore be it

*Resolved*, That the Governor of the State is hereby authorized and directed to bring the matter to the attention of our Representative and Senators in Congress, and request them to unite with him in endeavors to secure the same to be paid over to the Treasurer of State at as early a day as is possible. And the Governor is hereby authorized to employ any other and further assistance that may be necessary to secure that result.

Approved June 24th, 1867."

to secure from the Government of the United States, certain funds, being five per cent. of the proceeds of the sale of all public lands, lying within the State of Nebraska, belonging to said State, by virtue of section twelve, of an Act of

Congress, entitled "An Act to enable the people of Nebraska, to form a Constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States. Approved April 19th, 1864," did, in the spring of 1869, procure to be audited and allowed to the State of Nebraska, aforesaid, the sum of \$16,881.26, for which said sum, a warrant was issued by the proper department, at Washington, payable to the order of said David Butler, as Governor, of said State. That said warrant was brought to Omaha in said State, by one E. B. Taylor, and by him deposited in the First National Bank of Omaha, aforesaid, subject to the order of said David Butler, Governor, as aforesaid. That while so deposited, he, the said David Butler, Governor, as aforesaid, gave a Power of Attorney to one Nelson C. Brock, to endorse said warrant or draft, and receive the money thereon. That said Nelson C. Brock, by virtue of the authority so given, did endorse said warrant or draft; and receive thereon the sum of \$16,881.26, and did convey the same to Lincoln, in said State, and there deposited the same in the Banking House of one James Sweet, and the said Nelson C. Brock, with the consent and subject to the order and control of the said David Butler, Governor, as aforesaid. That while said money was so subject to his order and control, he, the said David Butler, Governor as aforesaid, was guilty of unlawfully and corruptly neglecting to discharge his duty in regard to said money; and of appropriating the same to his own use and benefit, whereby he became and was guilty of misdemeanors in his said office.

SPECIFICATION 1st. That having said sum of \$16,881.26, under his control and subject to his order, he, the said David Butler, Governor as aforesaid, did corruptly and unlawfully neglect, and refuse to pay the same into the Treasury of the State of Nebraska, and from

the time said money was so under his control, and subject to his order, to the time of exhibiting these articles, has so neglected and refused to pay the same into said Treasury, whereby said David Butler, Governor of the State of Nebraska, did then and there commit and was guilty of a misdemeanor in office.

**SPECIFICATION 2d.** That having said sum of \$16,881.26, under his control and subject to his order, he, the said David Butler, Governor as aforesaid, did, during the month of May, A. D. 1869, corruptly and unlawfully intermingle the same with his own private funds, and use the same for his own personal benefit. Whereby said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of a misdemeanor in office.

**SPECIFICATION 3d.** That having said sum of \$16,881.26, under his control and subject to his order, he, the said David Butler, Governor, as aforesaid, did, during the month of May, A. D. 1869, unlawfully and corruptly intermingle with his own private funds, and use for his own private benefit, a part of said money, to-wit: the sum of \$1,881.26, whereby said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of a misdemeanor in office.

**SPECIFICATION 4th.** That having said sum of \$16,881.26, under his control and subject to his order, he, the said David Butler, Governor, as aforesaid, did cause the same to be deposited in the Banking House of James Sweet and Brock, in the city of Lincoln, Nebraska, on the 25th day of May, A. D. 1869, and from thence, from time to time, during the years 1869 and 1870, unlawfully and corruptly draw out, handled, employed, and used the same as his own private funds, and for his own private use and benefit; whereby the said David Butler, Governor of the State of Nebraska, then and there committed, and was guilty of a misdemeanor in office.

## ARTICLE II.

That said David Butler, Governor of the State of Nebraska, in the exercise of the powers and prerogatives conferred upon and belonging to him by law as such Governor, has corruptly and unlawfully used and offered and attempted to use such official powers and prerogatives, and corruptly and unlawfully refused to perform his duties as such Governor, for the purpose and object and with the intent of securing to himself profits, gain, and emolument, and with intent to extort money or advantage from persons having claims against the State, or seeking some office, right, or privilege under the laws thereof,

**SPECIFICATION 1st.** That the said David Butler, Governor of the State of Nebraska, being, by virtue of that office, one of the Commissioners authorized by an Act of the Legislature of the State of Nebraska, entitled "An Act to provide for the sale of the unsold lots and blocks in the town-site of Lincoln, and for the location and erection of a State University and Agricultural College, and State Lunatic Asylum, approved February 15th, 1869," to expend monies belonging to the State of Nebraska, in and about the erection of a building for a State University, and to audit and allow claims and accounts therefor. And one M. J. McBird, having a claim and demand against the State for services by him performed as Architect in and about furnishing plans and specifications for said buildings, he, the said McBird, in the month of August, A. D. 1869, at Lincoln, in said State, did present his said claim, and demand for allowance and approval, to the said David Butler, Governor, as aforesaid, who did then and there, scandalously and corruptly, offer and propose to the said McBird in substance and to the effect following: That he, the said David Butler, Governor as aforesaid, would procure to be issued a warrant upon the Treasurer of the State of Nebraska for the sum of three thousand seven hundred and fifty dollars in favor of said McBird, for his said services, provided and on condition that said McBird should retain the sum of two thousand dollars only out of the proceeds of such warrant, to-wit: the money to be drawn from the State Treasury thereupon, and should pay to him, the said David Butler, for his use and disposal, the sum of seventeen hundred and fifty dollars of such proceeds, and that unless the said McBird would promise so to do, he, the said David Butler, would allow said McBird only fifteen hundred dollars upon his said claim and demand. And thereupon the said McBird did agree to the said proposition, and the said David Butler, Governor as aforesaid, immediately caused and procured such warrant to be issued, for the sum of three thousand seven hundred and fifty dollars, in favor of said McBird, who thereupon, in the month of August, 1869, obtained and received upon such warrant the sum of three thousand seven hundred and fifty dollars, and did, in pursuance of said scandalous and corrupt agreement, at the office of said Governor, in Lincoln, in the State of Nebraska, in the month of August, A. D. 1869, pay to and leave with said David Butler, Governor aforesaid, part of said money, to-wit: the sum of seventeen hundred and fifty dollars. And the said David Butler, Governor

as aforesaid, did then and there receive the same in pursuance of such scandalous and corrupt agreement, contrary to his duty and his oath of office, and whereby the said David Butler, Governor of Nebraska, did then and there commit and was guilty of a misdemeanor in office.

**SPECIFICATION 2d.** That the said David Butler, Governor of the State of Nebraska, being such Commissioner, and having such authority as set forth in the last above specification; the said M. J. McBird, mentioned therein, presented to the said Governor, at Lincoln, in said State of Nebraska, in the month of November, A. D. 1869, another demand and claim for additional services as architect in and about the making of plans and specifications for, and superintending the erection of the aforesaid State University building; and thereupon the said David Butler did, then and there, scandalously and corruptly agree with the said McBird in substance and to the effect that the said Butler, as Governor as aforesaid, would allow the said McBird's claim and demand at the sum of one thousand eight hundred and twenty-eight dollars and twenty-six cents, and that the said McBird would, in consideration thereof, pay to him, the said David Butler, one-half thereof; and thereupon the said David Butler, Governor as aforesaid, did allow such claim and demand at said sum, and procure and cause to be issued thereupon two warrants upon the Treasurer of the State of Nebraska, each for the sum of nine hundred and fourteen dollars and thirteen cents; and then and there, in pursuance of the said scandalous and corrupt agreement, the said McBird endorsed and delivered one of the said warrants to said David Butler, who received and kept the same. Thereby the said David Butler, Governor of the State of Nebraska, did then and there commit and was guilty of a misdemeanor in office.

**SPECIFICATION 3d.** That the said David Butler, Governor as aforesaid, acting as one of the Board of Building Commissioners of the State of Nebraska, and together with the other members of said Board, during the year 1869, did enter into contract with D. J. Silver & Son, for the erection of the building known as the University, at Lincoln, Nebraska. That about the 29th day of November, A. D. 1870, in and during an interview between R. D. Silver, son of D. J. Silver, and one of said contractors, and the said David Butler, in the private office of the said David Butler, Governor as aforesaid, he, the said David Butler, asked the said Robert D. Silver if he was not going to do something for him, the said David Butler, and said

he thought he, the said R. D. Silver, ought to give him, the said David Butler, Governor as aforesaid, ten thousand dollars, and refused to settle the accounts of the said D. J. Silver & Son, until he, the said R. D. Silver, acquiesced in such demand, so that he, the said Silver, was constrained to, and did agree to give the said David Butler, Governor as aforesaid, the said sum of ten thousand dollars. That a few days afterwards he, the said David Butler, Governor as aforesaid, called the said Silver into the private office of him, the said David Butler, Governor as aforesaid, and again asked the said Silver if he was not going to give him, the said David Butler, Governor as aforesaid, the said ten thousand dollars, as he had agreed to do; and upon being answered in the negative by him, the said Silver, he, the said David Butler, Governor as aforesaid, became angry, and used harsh and threatening language towards him, the said Robert D. Silver, saying, menacingly, that he would remember him for that; whereby the said David Butler, Governor of the State of Nebraska, did then and there commit and was guilty of a misdemeanor in office.

**SPECIFICATION 4th.** That under and by virtue of an Act of the Legislature of the State of Nebraska, entitled "An Act to lease certain Saline lands to Anson C. Tichenor, Jesse F. Green, and others," approved February 15th, 1869, the said David Butler, Governor of the State of Nebraska, at the time hereinafter next mentioned, had authority to lease to any competent party or parties, certain Saline lands, belonging to the State of Nebraska. Thereupon to-wit: On the 15th day of July, A. D. 1869, one Thomas F. Hall, a party competent to take and receive a lease of the said lands, did apply to the said David Butler, Governor as aforesaid, at Lincoln, said State of Nebraska, for a lease of certain of the said Saline lands, in township ten, (10) north of range six, (6) east of the sixth principal meridian, in the County of Lancaster, in the State of Nebraska; and the said David Butler, Governor as aforesaid, did, then and there, wilfully and corruptly suggest, propose and offer to the said Thomas F. Hall, that if he, the said David Butler, should receive the sum of five thousand dollars, for his own use and benefit, he would, as Governor as aforesaid, lease the said lands to the said Thomas F. Hall; and did then and there wilfully and corruptly indicate to the said Thomas F. Hall, and give him to understand, that unless he, the said David Butler, Governor, as aforesaid, should receive the said sum of five thousand dollars, as aforesaid, he would refuse to lease the said lands to him, the said Thomas F. Hall, and because said Thomas F. Hall did

decline and refuse to pay or offer to said David Butler, Governor, as aforesaid, any sum of money or consideration therefor, to the said David Butler, Governor, as aforesaid, did wilfully and corruptly decline and refuse to lease the said Saline lands to the said Hall, contrary to his duty and his oath of office as Governor; and whereby David Butler, Governor of the State of Nebraska, did commit, and was guilty of a misdemeanor in office.

**SPECIFICATION 5th.** That the said David Butler, Governor of the State of Nebraska, being by virtue of his office the President, and a member of the Board of Regents, known as the Regents of the University of Nebraska, and the said Board of Regents having power and authority to appoint a Treasurer of the said Board, said David Butler, Governor, and President and member of the Board of Regents, as aforesaid heretofore to-wit: On the first day of January, A. D. 1871, at Lincoln, in the State of Nebraska, did wilfully and corruptly promise to, and agree with one Nelson C. Brock that he, the said David Butler, would endeavor to procure the appointment of the said Nelson C. Brock as Treasurer of the said Board of Regents, and would use his vote and influence as a member, and as President of the said Board, for the purpose of securing, and with a view to the end of procuring such appointment, for a consideration, in money, to-wit: the sum of seven hundred and fifty dollars, to be paid by said Brock to him, said David Butler, in case the said David Butler should so secure such appointment, contrary to his duty and oath of office, and whereby said David Butler, Governor of the State of Nebraska, then and there committed and was guilty of a misdemeanor in office.

**SPECIFICATION 6th.** That the said David Butler, Governor of the State of Nebraska, and President and member of the Board of Regents, as set forth in the last above specification, did heretofore, to-wit: On the first day of January, 1871, at Lincoln, in the State of Nebraska, improperly, disgracefully, and scandalously receive, entertain and tolerate a proposition, then and there made to him, as such Governor, and President and member of said Board of Regents, by one Nelson C. Brock, to the effect, that if the said David Butler would, by his influence and efforts, obtain and secure the appointment of the said Nelson C. Brock as Treasurer of said Board of Regents, he, the said Brock, would pay to the said David Butler a large sum of money, to-wit: Seven hundred and fifty dollars; whereby the said David Butler, Governor of the State of Nebraska, did bring scandal and disgrace upon his exalted

office, and did then and there commit, and was guilty of a misdemeanor therein.

**SPECIFICATION 7th.** That under and by virtue of an Act of the Legislature of the State of Nebraska, entitled, "An Act to provide for the sale of unsold lots and blocks in the town site of Lincoln, and for the location and erection of a State University and Agricultural College, and State Lunatic Asylum;" Approved February 15th. 1869, the said David Butler, Governor of the State of Nebraska, was one of the Commissioners authorized to locate a State Lunatic Asylum, at or near the town site of Lincoln. And in the summer of the year 1869, to-wit: On the 1st day of July, A. D. 1869, at Lincoln, in the State of Nebraska, the said David Butler, Governor, as aforesaid, received and consented to a certain conveyance from one Dr. French, of the North half of the Northwest quarter, of section ten in township nine, north of range six east, in Lancaster county, State of Nebraska; or took such conveyance thereof from some person or persons unknown to himself, or to some person or persons unknown, for his benefit in whole or in part, which was so made to, and accepted by the said David Butler, for a consideration greatly below the value of the said land, as an inducement and bribe to influence his action and decision relative to the location of said Asylum, and by which he was improperly and corruptly influenced to decide as one of said Commissioners, in favor of locating said Asylum, in the immediate vicinity of said land so conveyed, and where said Asylum was soon thereafter located, whereby the said David Butler, Governor of the State of Nebraska, then and there committed and was guilty of a misdemeanor in office.

### ARTICLE III.

That on the 18th day of February, A. D. 1869, one Champion S. Chase, Esq., was and for some time the last past, had been an Attorney for the State of Nebraska, retained and employed by the Governor of said State, and had as such Attorney rendered certain services for the said State, and it was the duty of the said David Butler, Governor of the State of Nebraska, under and by virtue of the law thereof, to determine what compensation for such services, was fair and just, and according to what was paid in similar cases. And thereupon, to-wit: On the 18th day of February, A. D. 1869, the said David Butler, Governor, as aforesaid, did wilfully, falsely, and corruptly, determine and represent to John Gillespie, then the Auditor of said State of Nebraska, that he, the said David Butler, Governor, as aforesaid, deemed the sum of two thousand dollars to be

a just and fair compensation for the services so rendered by the said Champion S. Chase, Attorney as aforesaid, and did wilfully, corruptly and unlawfully, induce and cause the said Auditor to issue two certain warrants upon the Treasurer of said State of Nebraska, for the sum of one thousand dollars each, under the pretense that the same were issued for the services of the said Chase as such Attorney; he, the said David Butler, Governor as aforesaid, then well knowing that said sum of two thousand dollars was a much larger sum than was fair or just for such services, or was paid for similar services; and not intending that the whole thereof should be paid to the said Chase, but corruptly intending to appropriate one of the said warrants to his own use, and thereupon, to-wit: On the 22d day of February, A. D. 1869, the said David Butler, Governor, as aforesaid, did wilfully and corruptly appropriate, to his own use, one of the said warrants, and upon, and by virtue of the same, did draw and receive from James Sweet, the Treasurer of the State of Nebraska, the sum of one thousand dollars, which he then and there appropriated to his own use and benefit, contrary to his duty and his oath of office, whereby the said David Butler, Governor of the State of Nebraska, then and there committed, and was guilty of a misdemeanor in office.

## ARTICLE IV.

That the said David Butler, so being Governor, as aforesaid, in the year A. D. 1869, being, by virtue of his office, one of the Commissioners provided for by "An act to provide for the sale of the rentals, lots, and blocks on the town site of Lincoln, and for the location and erection of a State University, Agricultural College and State Lunatic Asylum, approved "February 15, 1869, to locate a site for a State Lunatic Asylum and to direct the expenditure of the sums named in said act in the building of a State Lunatic Asylum, did unlawfully and corruptly enter into contract with one Joseph Ward for the completion of the said Lunatic Asylum, at a contract price greatly to-wit: Eighty-eight thousand dollars in excess of the sum appropriated for said building. That he, the said Governor, well knew at the time that said Ward was entirely irresponsible and unable to give the bonds required by law, that he had no qualification nor capacity as a builder, that by the terms of said contract the foundation of said Asylum was to be completed for eighteen thousand and five hundred dollars, and that in the spring of 1870, said foundation was not finished, and there was due to said Ward less than that sum upon said contract, yet the Governor, well

knowing the premises, approved the estimates of said Ward, and caused the same to be allowed and paid to the amount of forty-five thousand dollars. Whereby he, the said David Butler, Governor, as aforesaid, did then and there commit, and was guilty of misdemeanor in his said office.

## ARTICLE V.

That said David Butler, being Governor as aforesaid, in the year 1869, being a member of the Board of Regents of the University of Nebraska, and ex-officio President of said Board, at Lincoln, in the State of Nebraska, did wilfully and recklessly assent, and become a party to a contract with D. J. Silver & Son, dated August 18, 1869, for the erection of the State University and Agricultural College of Nebraska, at a price greatly in excess of the appropriation therefor, whereby said David Butler, Governor of the State aforesaid, then and there committed and was guilty of a misdemeanor in office.

## ARTICLE VI.

That, at the present session of this Legislature, in the month of January last, the House of Representatives, of the State of Nebraska, passed a resolution in the words, and to the effect following, to-wit:

"Resolved, that the Governor is hereby requested to communicate to this House, at the earliest moment, the name of the agent appointed by authority of an act of the Legislature, to collect from the United States the five per cent. upon the sales of public lands set apart for school purposes prior to the admission of the State. The amount so accrued and due to the State, and the amount collected and paid into the State Treasury. Also the amount paid to said State agent for his services."

And thereupon the said resolution was duly communicated to the said David Butler, Governor of the State of Nebraska, and in response thereto the said Governor, on the 25th day of January, A. D. 1871, sent and transmitted to the said House of Representatives, a communication, in the words and to the effect following to-wit:

"To the Honorable, the Speaker of the House of Representatives:

In response to a resolution passed by the Honorable House of Representatives, relative to the collection of the five per cent. funds. I submit the following report: Amount accrued and due the State, January 1st, 1869, \$16,881.20. While in Washington, in the spring of 1869, I secured the auditing and payment of this claim,

and deposited the above amount in the State Treasury. No fee or commission was paid any agent for its collection.

(Signed,) DAVID BUTLER."

In which communication the said David Butler, Governor, as aforesaid, did falsely declare that he deposited the amount of money therein mentioned, in the State Treasury, well knowing that he had not deposited the same, or any part thereof in such Treasury; and intending thereby to deceive the House of Representatives, the Legislature, and the people of said State, in the particulars last mentioned, contrary to his duty, and his oath of office; and whereby the said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of a misdemeanor in office.

#### ARTICLE VII.

That the said David Butler, Governor of the State of Nebraska, being authorized and empowered by the provisions of an act entitled "An Act to amend an Act to provide for the Registry of School Land, for the control and disposition thereof, and for the safe keeping of the funds derived from the sale and lease of said lands." Approved, February 15th, 1869, in conjunction with the Land Commissioner and Treasurer of the State, to invest certain funds, received by such Treasurer, as advance or full payment by the purchasers of school lands, in United States, State, or other good and sufficient securities, which securities should bear not less than six per cent. annual interest, did unlawfully, and wilfully advise and consent to the loaning of such funds, and did procure the same to be loaned in divers sums and to divers persons, and did cause the same to be loaned improvidently, recklessly, and without any authority of law and regard to the public interests, and upon totally insufficient and inadequate security, and without concurrent action thereon by the said Treasurer and Auditor.

SPECIFICATION 1st. He, the said David Butler, Governor, as aforesaid, did, on or about the 30th day of July, A. D. 1870, instruct James Sweet, State Treasurer, he being then and there the custodian of said School Funds, to let Anson C. Tichenor have \$10,000.00 of said school money, and he, the said David Butler, Governor, as aforesaid, would approve the security therefor. That said sum was loaned to said Tichenor without the assent of either State Auditor or Treasurer. That the security taken therefor was, and by him, the said Governor, was at the time known to be wholly inadequate and insufficient; whereby the said

David Butler, Governor of the State of Nebraska, then and there committed and was guilty of a misdemeanor in office.

#### ARTICLE VIII.

That the said David Butler, Governor of the State of Nebraska, in the year 1869, but at what particular time is unknown, at Lincoln, in the State of Nebraska, did receive a sum of money, to-wit: The sum of six hundred and forty-eight dollars and forty-three cents, a balance of moneys in the hands of one Thomas L. Griffey, Treasurer of the Board of Immigration, and belonging to the State of Nebraska, and which money the said David Butler, Governor, as aforesaid, has never paid into the Treasury of this State, but has wilfully, corruptly and unlawfully appropriated to his own use, whereby the said David Butler, Governor of the State of Nebraska, did then and there commit and was guilty of a misdemeanor in office.

#### ARTICLE IX.

That said David Butler, Governor of the State of Nebraska, in the year 1870, but at what particular time is unknown, at Lincoln, in the State of Nebraska, regardless of his duty and oath of office, did improperly, partially, wilfully and unlawfully execute and cause to be issued and delivered to the Sioux City and Pacific Railroad Companies, a patent or patents of the State of Nebraska, of and for a large quantity of the public lands belonging to the state of Nebraska, to-wit: Seventy-five sections thereof, situate in the counties of Dodge, Burt, and Cumling, and being the same lands granted or secured by an act of the Legislature of this State, to the Northern Nebraska Air Line Railroad Company; whereby the said David Butler, Governor of the State of Nebraska, then and there committed, and was guilty of a misdemeanor in office.

#### ARTICLE X.

That the said David Butler, Governor, as aforesaid, at divers times, between the 15th day of February, 1869, and the time of exhibiting these articles, but at what particular time is unknown, did sell to divers persons, but to what particular persons is not known, lots and blocks in the city of Lincoln, Nebraska, and lands belonging to the State of Nebraska, but what particular lots and blocks, or lands, is unknown, at private sale, the title to which said lots and blocks, and lands, was at the time of such sale in the State of Nebraska, and a portion of the purchase money of such lots and blocks and lands, did appropriate to his own private use and benefit.

**SPECIFICATION, 1st.** That said David Butler, Governor, as aforesaid, of the State of Nebraska, in the month of December, A. D. 1869, sold to one James G. Gerrens, the southeast quarter of section thirty (30), in township ten (10), north of range six (6) east, in Lancaster county, in the State of Nebraska, belonging to the State of Nebraska, for the sum of nineteen hundred and twenty dollars, of which sum received therefor, he appropriated to his own use and benefit, the sum of eleven hundred and twenty dollars; whereby, the said David Butler, Governor of the State of Nebraska, then and there committed, and was guilty of a misdemeanor in office.

#### ARTICLE XI.

That said David Butler, Governor of the State of Nebraska, by an act of the Legislature of the State of Nebraska, entitled "An Act to provide for the sale of the unsold lots and blocks in the town site of Lincoln, and for the location and erection of a State University and Agricultural College, and State Lunatic Asylum," approved February 15th, 1869, was made a Commissioner in conjunction with the Secretary of State and Auditor to sell the unsold lots and blocks in the town site of Lincoln. That said David Butler, Governor, as aforesaid, in the discharge of the duties of such Commissioner, between the 15th day of February, A. D. 1869, and the time of exhibiting these articles was guilty of corrupt practices and misdemeanors in his said office of Governor.

**SPECIFICATION 1st.** That said David Butler, Governor, as aforesaid, did, in the month of April, 1870, sell to one Andrew J. Cropsey,

lots seven, eight, nine, ten, eleven and twelve, in block one hundred and fifty-one, in Lincoln, Nebraska, the title to which said lots, at the time of such sale, was in the State of Nebraska, at private sale, causing the title deeds therefor to be executed in the name of the State, for the sum of two thousand four hundred dollars, a portion of which said purchase money, he, the said David Butler, appropriated to his own use and benefit; whereby the said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of a misdemeanor in office.

And the House of Representatives by protestation, saving to themselves the liberty of exhibiting at any time hereafter, any further articles or other accusations or impeachment against the said David Butler, Governor of the State of Nebraska, and also of replying to his answers which he shall make, unto the articles herein preferred against him, and of offering proof to the same, and every part thereof, and to all and every other article, accusation, or impeachment, which shall be exhibited by them as the case shall require. Do demand, that the said David Butler may be put to answer the misdemeanors in office herein charged against him, and that such proceedings, examinations, trials and judgments, may be thereupon had and given, as may be agreeable to law and justice.

G. W. COLLINS.

Speaker of the House of Representatives.

Attest:

F. M. McDONAGH.

Chief Clerk, H. R.



# RULES OF IMPEACHMENT.

## RULES OF IMPEACHMENT.

### **Rules of Procedure and Practice in the Senate when Sitting on the Trial of Impeachment.**

1. Whensoever the Senate shall receive notice from the House of Representatives that managers are appointed on their part to conduct an impeachment against any person, and are directed to carry articles of impeachment to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment agreeable to said notice.

2. When the managers of an impeachment shall be introduced at the bar of the Senate, and shall signify that they are ready to exhibit articles of impeachment against any person, the presiding officer of the Senate shall direct the Sergeant-at-arms to make proclamation, who shall, after making proclamation, repeat the following words, viz: "All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the State of Nebraska, articles of impeachment against —," after which the articles shall be exhibited, and then the presiding officer of the Senate shall inform the managers that the Senate will take proper order on the subject of impeachment, of which due notice shall be given to the House of Representatives.

3. Upon such articles being presented to the Senate, the Senate shall, at 1 o'clock afternoon of the day (Sunday excepted) following such presentation, or sooner if so ordered by the Senate, proceed to the consideration of such articles, and shall continue in session from day to day (Sundays excepted) after the trial shall

commence, (unless otherwise ordered by the Senate,) until final judgment shall be rendered, and so much longer as may in its judgment be needful. Before proceeding to the consideration of the articles of impeachment, the presiding officer shall administer the oath herein-after provided to the members of the Senate then present, and to the other members of the Senate as they shall appear, whose duty it shall be to take the same.

4. The presiding officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts authorized by the rules, or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.

5. The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts and judgments, to preserve order, and to punish in a summary way contempts of and disobedience to its authority, orders, mandates, writs, precepts or judgments, and to make all lawful orders, rules and regulations, which it may deem essential or conducive to the ends of justice. And the Sergeant-at-arms, under the directions of the Senate, may employ such aid and assistance as may be necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs and precepts of the Senate.

6. The presiding officers of the Senate shall direct all necessary preparations in the Senate chamber, and the presiding officer of the trials shall direct all the forms of proceeding while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial, not otherwise specially provided for. And the presiding officer of the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate

shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance submit any such question to a vote of the members of the Senate.

7. Upon presentation of articles of impeachment and the organization of the Senate as hereinbefore provided, a writ of summons shall issue to the accused, reciting said articles and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate and named in such a writ; and file his answer to said articles of impeachment, and to stand to, and abide the orders and judgment of the Senate thereon, which writ shall be served by such officer or person as shall be named in the precept thereof; such number of days prior to the day fixed for such appearance as shall be named in such precept, either by the delivery of an attested copy thereof to the person accused, or, if that cannot conveniently be done, by leaving such copy at the last known place of abode of such person or at his usual place of business, in some conspicuous place therein, or if such service shall be, in the judgment of the Senate, impracticable, notice to the accused to appear shall be given in such other manner, by publication, or otherwise, as shall be deemed just; and if the writ aforesaid shall fail of service in the manner aforesaid, the proceedings shall not thereby abate, but further service shall be made in such manner as the Senate may direct. If the accused, after service, shall fail to appear, either in person or by attorney on the day so fixed therefor as aforesaid; or, appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

8. At ten o'clock forenoon, of the day appointed for the return of the summons for the person impeached, the legislative and executive business of the Senate shall be suspended, and the Secretary of the Senate shall administer an oath to the returning officer in the form following, viz:

"I, —, do solemnly swear that the return made by me upon the process issued on the — day of —, by the Senate of the State of Nebraska, against —, is truly made, and that I have performed such services as therein described, so help me God." Which oath shall be entered at large upon the records.

9. The person impeached shall then be called to appear and answer the articles of impeachment against him. If he appear, or any

person for him, the appearance shall be recorded, stating particularly if in person, or by himself, or his agent, or attorney, naming the person appearing, and the capacity in which he appears. If he do not appear, either personally, or by agent or attorney, the same shall be recorded.

10. At ten o'clock forenoon of the day appointed for the trial of an impeachment, the legislative and executive business of the Senate shall be suspended, and the Secretary shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment of —, in the Senate chamber, which chamber is prepared with accommodations for the reception of the House of Representatives.

11. The hour of the day at which the Senate shall sit upon a trial of impeachment, shall be (unless otherwise ordered) ten o'clock A. M.; and when the hour for sitting shall arrive, the presiding officer of the Senate shall so announce; and thereupon the presiding officer of such trial shall cause proclamation to be made, and the business of the trial shall proceed. The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate; but on such adjournment the Senate shall resume the consideration of its legislative and executive business.

12. The Secretary of the Senate shall record the proceedings in case of impeachment as in the case of legislative proceedings, and the same shall be reported in the same manner as the legislative proceedings of the Senate.

13. Counsel for the parties shall be admitted to appear and be heard upon an impeachment.

14. All motions made by the parties or their counsel shall be addressed to the presiding officer, and if he, or any Senator, shall require it, they shall be committed to writing and read at the Secretary's table.

15. Witnesses shall be examined by one person on behalf of the party producing them, and then cross-examined by one person on the other side.

16. If a Senator is called as a witness, he shall be sworn and give his testimony standing in his place.

17. If a Senator wishes a question to be put to a witness, or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing and put by the presiding officer.

18. At all times while the Senate is sitting upon the trial of an impeachment, the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions.

19. All preliminary and interlocutory questions, and all motions, shall be argued for not exceeding one hour on each side, unless the Senate shall by order extend the time.

20. The case on each side shall be opened by one person. The final argument on the merits may be made by two persons on each side, (unless otherwise ordered by the Senate, upon application for that purpose,) and the argument shall be opened and closed on the part of the House of Representatives.

21. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the Senate, a judgment of acquittal shall be entered; but if the person accused in such articles of impeachment shall be convicted upon any of the said articles by the votes of two-thirds of the Senators, the Senate shall proceed to pronounce judgment, and a certified copy of such judgment shall be deposited in the office of the Secretary of State.

22. All the orders and decisions shall be made and had by yeas and nays, which shall be entered upon the record, and without debate, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for not more than ten minutes on any interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the members present.

23. Witness shall be sworn in the following form, namely:

"You — do swear (or affirm, as the case may be) that the evidence you shall give in the case now pending between the people of the State of Nebraska and —, shall be the truth, the whole truth, and nothing but the truth, so help you God." Which oath shall be administered by the Secretary or any other duly authorized person.

Form of subpoena to be issued on the application of the managers of the impeachment, or of the party impeached, or of his counsel.

The people of the State of Nebraska, to —, Greeting:

You, and each of you, are hereby commanded to appear before the Senate of the State of Nebraska, on the — day of —, at the Senate chamber, in the city of Lincoln, then and there to testify your knowledge in the case which is before the

Senate, in which the House of Representatives have impeached —.

Fail not.

Witness — and presiding officer of the Senate at the city of Lincoln, this — day of —, in the year of our Lord — and of the Independence of the United States the —.

Form of the service for said subpoena:

You are hereby commanded to serve and return the within subpoena according to law. Dated at Lincoln, this — day of — in the year of our Lord —, and in the Independence of the United States the —.

Sec'y of the Senate.

Form of oath to be administered to the members of the Senate sitting in the trial of impeachments:

I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of —, now pending, I will do justice according to law and evidence, so help me God.

Form of summons to be issued and served upon the person impeached:

The People of the State of Nebraska, ss.  
The Senate of the State of Nebraska to — Greeting:

WHEREAS, The House of Representatives of the State of Nebraska, did, on the — day of — exhibit to the Senate articles of impeachment against you, the said — in the words following:

[Here insert the articles.]

And demand that you, the said —, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials and judgments might be thereupon had, as are agreeable to law and justice:

You, the said —, are therefore hereby summoned to be and appear before the Senate of the State of Nebraska, at their chamber in the city of Lincoln, on the — day of —, at twelve o'clock and thirty minutes, afternoon, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders, directions, and judgments as the Senate of the State of Nebraska shall make in the premises according to the Constitution and laws of the State of Nebraska.

Hereof you are not to fail.

Witness — presiding officer of the said Senate, at the city of Lincoln, this — day of — in the year of our Lord — and of the Independence of the United States, the —.

Form of precept to be endorsed on said writ of summons:

The State of Nebraska, ss.:

The Senate of the State of Nebraska, to \_\_\_\_\_ greeting;

You are hereby commanded to deliver to and leave with \_\_\_\_\_ if conveniently to be found, or if not, to leave at his usual place of abode or at his usual place of business, in some conspicuous place, a true and attested copy of the within writ of summons, together with a copy of this precept, and in whichever way you perform the service let it be done at least \_\_\_\_\_ days before the appearance day mentioned in said writ of summons.

Fail not and make due return of this writ of summons and precept with your proceedings

therein indorsed, on or before the appearance day mentioned in said writ of summons.

Witness \_\_\_\_\_ presiding officer of the Senate at the city of Lincoln, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, and of the Independence of the United States the \_\_\_\_\_.

All processes shall be served by the Sergeant-at-arms of the Senate, unless otherwise ordered by the court or President of the Senate.

24. If the Senate shall at any time fail to sit for the consideration of articles of impeachment on the day or hour fixed therefor, the Senate may, by an order to be adopted without debate, fix a day and hour for resuming such consideration.

# ANSWER.

**Senate.**

Wednesday, March 8.

Mr. Brown offered a resolution authorizing the President to employ short-hand reporters for the impeachment trial. Adopted.

Thursday, March 9.

**Senate.**

SITTING AS A COURT OF IMPEACHMENT.

The Sergeant-at-arms made the usual proclamation.

The journal of the last session was read and approved.

The Managers of the impeachment of the Governor, accompanied by the Committee of the Whole of the House of Representatives appeared, and also the Governor by his counsel, Hons. Clinton Briggs, John I. Redick and T. M. Marquette.

Mr. Redick announced that the answer of the Governor to the articles of impeachment was ready, and prior to offering the same, explained that it was an answer to the merits of all the charges and specifications set forth in the articles, but that at the close of the answer, the exceptions to certain articles would appear.

The answer of the Governor was read as follows:

**IN THE MATTER**

**Of the Impeachment of David Butler,  
Governor of the State of Nebraska.**

**ANSWER.**

And now comes the respondent, David Butler, in his own proper person, saving unto himself all and all manner of exception and advantage to the many errors and imperfections in the several articles and specifications in said articles contained, and not confessing any or either of said articles or specifications to be true, for answer to them, or so many thereof as he is advised it is necessary to make answer to, answering, saith:

That it is true the Government of the United States had donated to the State of Nebraska the five per cent. on proceeds of the public lands, and the amount thereof was due the State of Nebraska, and that this respondent was authorized to procure the same, to be paid over to the Treasurer of said State; and that in the spring of 1869, this respondent procured to be audited and allowed to the State of Nebraska, the sum of \$16,881.26, for which amount a warrant was duly issued by the proper department at Washington, payable to the order of the respondent, as Governor of said State; and that the said warrant was brought to Nebraska by one E. B. Taylor, and deposited in the First National Bank, at Omaha, to the credit of this respondent, as Governor aforesaid, as set forth in said article of impeachment.

And this respondent further answering, says:

That it is true, that while said money was so deposited, this respondent, as Governor, executed in due form of law, countersigned by the Secretary of State, and attested by the Great Seal of the State of Nebraska, a power of attorney to one Nelson C. Brock, who was at that time Deputy State Treasurer of Nebraska, authorizing him to endorse the name of this respondent on said warrant so deposited at the First National Bank at Omaha, and receive the proceeds thereof, being the full amount of said warrant, \$16,881.26, which, as this respondent is informed and believes, said Brock did receive and deposited the same in the State Treasury of Nebraska; but this respondent most distinctly denies that the said Brock, with the knowledge or consent of this respondent, deposited the proceeds of said warrant, or any part thereof, with or in the banking house of James Sweet and said Brock, as Bankers, or to the order of this respondent, or in any other way by which said sum of money would be subject to the order or control of this respondent, and denies that this respondent had any control over the proceeds of said warrant or any part thereof, since the said Nelson C. Brock, Deputy State Treasurer, received the proceeds from the First National Bank at Omaha;

But alleges the truth to be, that the said sum so received by him, was received with the understanding and direction that it was to be brought to Lincoln and deposited in the State Treasury, and this respondent alleges on information and belief that it was so deposited, as all other moneys belonging thereto, and the said Brock charged the State a small per centage for his trouble in that regard. This respondent further answering, says: That it is untrue that he unlawfully and corruptly neglected to discharge his duties in regard to said money, and denies that he appropriated the same, or any part thereof, to his own use.

But this respondent alleges that some time after said money was deposited as above set forth, he did, at the suggestion and by the consent of the Treasurer of the State, borrow said sum of money of the State and that at the time the respondent agreed to, and

did give to the State the bonds herein-after mentioned, and agreed to secure the same by mortgage on Real Estate situated in this State, and the said Treasurer at the time promised to draw the mortgage, and present them to this respondent without delay, but the Treasurer having neglected to prepare the same, after the lapse of considerable time, the respondent caused said mortgages to be prepared, and did execute to said State in due form of law, nineteen mortgages, on as many distinct tracts of land, amounting in the aggregate to about three thousand acres of land, which mortgages, bearing date May 25th, 1869, were duly executed and acknowledged by this respondent, and his wife, and were, about the 1st of January, 1871, delivered to said State, duly recorded in the offices of the County Clerks in the counties respectively where said lands are situated;

That at the time said mortgages were executed and recorded, this respondent was seized of the same in fee simple.

That they were free from incumbrances, and that said lands were then, and still are, worth at least thirty thousand dollars in cash, and that each particular tract of land, included in such mortgages, is worth, in cash, at least double the amount secured thereby;

That at the date of said mortgage, the respondent executed to said State nineteen bonds for the aggregate sum of \$16,881.26, payable to said State five years after date, with interest from date at the rate of ten per cent. per annum, the interest payable annually;

And that the respondent has paid the interest due on said bonds and mortgages for one year.

The respondent will ask leave to read said bonds and mortgages on the trial of this cause;

And states the truth to be, that every act of this respondent, in and about the procuring of said warrant from the Government of the United States to the State of Nebraska, and causing the same to go into the possession of the Treasurer of State, and by him to be protected and preserved as State funds, and in effecting such loan, was done in perfect good faith,

and without the remotest idea or intention of defrauding or cheating the State out of one cent, and denies that he has thereby been guilty of misdemeanors in his office, as against him charged and set forth.

This respondent, for answer to the *First Specification*, in ARTICLE FIRST, denies each and every allegation therein contained, but alleges the truth to be that this respondent has had nothing whatever to do with said money, or any part thereof, since the date and execution of the power of attorney aforesaid, given to said Brock, Deputy State Treasurer, to receive the proceeds of said warrant from the First National Bank at Omaha, except as hereinbefore set forth.

This respondent, for answer to the *Second Specification* in said article, denies each and every allegation therein contained.

This respondent for answer to the *Third Specification* in said article, denies each and every allegation therein contained, and denies that he converted to his own use the sum of \$1,881.26, or any other sum or portion of said money, whereby this respondent committed and was guilty of a misdemeanor in office, as in said specification charged.

This respondent for answer to the *Fourth Specification* in said article, says: That it is wholly untrue that in the month of May, 1869, or at any other time, he, this respondent, caused the aforesaid sum of \$16,881.26 to be deposited in the banking house of James Sweet and said Brock, in the City of Lincoln, and from that time in the year 1869 and 1870 drew out, handled and used the same as his own private funds, and for his own use and benefit—but alleges, as he has hereinbefore, that he had nothing whatever to do with said money after the receipt thereof by Brock, as aforesaid, except as hereinbefore stated; and denies that this respondent has committed and was guilty of a misdemeanor in office, as in said specification charged.

This respondent, for answer to ARTICLE SECOND in said articles of impeachment, says: That he denies each and every allegation therein contained, and alleges the same to be false and wholly untrue.

This respondent for answer to the *First Specification* in said article says: That it is true that he was one of the Commissioners, authorized by an act of the Legislature of the State of Nebraska, entitled as in said specification set forth, approved February 15th, 1869, with power to expend moneys belonging to the State of Nebraska, in and about the erection of a building for a State University and to audit and allow claims and accounts therefor, and this respondent admits that M. J. McBird was the architect in and about furnishing plans and specifications for said building known as the University Building, and that he, McBird, had a claim and demand against the State, for services rendered in that behalf, and it is true that about the time set forth in said specification, he, said McBird, presented his claim to this respondent and the other two Commissioners, for allowance and approval, which by them was allowed; but this respondent distinctly denies that he had any such conversation, or made any such agreement, or had any such understanding with said McBird, or that he had any conversation, understanding, or agreement of any kind before said allowance and adjustment of his claim was made, and denies that he procured or caused the warrant to be issued to said McBird for the sum of \$3,750, in pursuance of any corrupt agreement, either expressed, implied or understood, but this respondent distinctly denies that he was acting as one of said Commissioners by virtue of his office as Governor, and further alleges that every act and every conversation that he did or had with said M. J. McBird in and about his claim and demand and the allowance thereof, was in the capacity and exercising the function of one of the Commissioners and not in the capacity of Governor, or by virtue of the power and duties reposed in him as such, but that every act done by said Commissioners must be the joint act of the three or the majority thereof to make it authoritative and valid, and this respondent further answering says that it is wholly false and untrue that this respondent acting as Governor, or otherwise, made or had any contract, agreement or understanding with said McBird that

he would procure to be issued a warrant upon the Treasurer of the State of Nebraska for the sum of \$3,750, in favor of said McBird for his services, upon condition that the said McBird should retain \$2,000 and pay to this respondent \$1,750 thereof, and that unless he, McBird, would agree to such arrangement, he, this respondent, would allow said McBird only \$1,500 of his said claim as charged in said specification. But this respondent alleges the truth to be that the claim and demand of said McBird was just and right and was at the request of the said McBird duly audited, allowed and paid without any deduction whatever or without any agreement or understanding, that any deduction should be made and this respondent denies that he ever received or retained any part of said sum.

Wherefore this respondent denies that he committed or was guilty of a misdemeanor in office as in said specification charged.

This respondent for answer to the *Second Specification* in said article, says: That it is true that the said M. J. McBird, in the month of November 1869, presented to this respondent as one of the Commissioners, a demand and claim for additional service as Architect, and in superintending the erection of the aforesaid State University Building, which claim, after being submitted to the other Commissioners, was duly audited and allowed, but this respondent most distinctly denies that he had any understanding or agreement of any kind whatever, either expressed or implied, that this respondent was to receive one cent as consideration for the allowing or adjusting of said claim, but alleges the truth to be that the claim of said McBird was just and right, and was allowed, and warrants issued to him for the amount. And respondent alleges that every act that he did in and about the allowing of the claim of McBird was purely in the capacity and function of one of the Commissioners, it requiring, in every instance, either the three or a majority to complete, perfect, and make the act valid and authoritative—but denies that in any or either of those transactions this respondent was using or exercising any of the powers or duties reposed in him

as Governor, and here submits to this high and honorable Court, whether any of this respondent's acts or doings as one of three Commissioners, and not as Governor, shall be brought in question and tried at this time, by this high and honorable Court.

Wherefore this respondent denies that he committed or was guilty of a misdemeanor in office, as in said specification charged.

This respondent for answer to the *Third Specification* in said article, says:

That it is true that he, in connection with the other members of the Board of Commissioners, in the year 1869, entered into the contract with D. J. Silver and Son for the erection of the building known as the University at Lincoln, Nebraska, as set forth in said specification, but this respondent denies that he had any such conversation or interview with R. D. Silver, as set forth in said specification; and further answering, most positively denies that he refused to settle with said Silver, or that he made any bargain or agreement of any kind; that he was to receive a cent in consideration of the allowing of his claims, or in any other way,—but alleges that the amount claimed by Silver was his due under a written contract, without a shadow of doubt as to the validity thereof, and which fact the said Silver well knew; but this respondent says that about the time his claim was finally approved and allowed, he, said Silver, stated to this respondent that he was anxious to realize the cash on his claim, and that he would be willing to lose eight or ten thousand dollars, or words to that effect, and have the amount due him in cash, and thereupon this respondent replied that he, in a few days, would see Mr. Kountze, of the First National Bank, and, perhaps, the money could be raised, and an arrangement of that kind made.

This respondent further says, that soon thereafter he saw Mr. Kountze, of the First National Bank, and partially arranged for the money, then came back and called upon Mr. Silver, informed him of what he had done, and proposed to cash his claim, when Mr. Silver informed this respondent that he had concluded not to cash his warrants.



Thereupon some angry and harsh language passed between this respondent and said Silver. Said Silver then and there stating that he would do this respondent all the harm he possibly could.

This respondent further alleges that every act in and about the claim of said Silver & Son, or conversation had, save and except the last one hereinbefore mentioned, was done in the capacity and while performing the functions of one of the Commissioners aforesaid, and not as Governor, and denies that he has committed and was guilty of a misdemeanor in office, as charged in said specification.

This respondent, for answer to the *Fourth Specification* in said articles, says:

That it is true that under the act in said specification referred to, this respondent as Governor, was empowered, and had the right to lease to any competent party or parties, certain saline lands belonging to the State of Nebraska, and that at the date set forth in said specification, one Thomas F. Hall did apply to this respondent to lease certain lands therein described.

But this respondent distinctly denies that he suggested to said Hall, that he must pay to him, this respondent, \$5,000—and for the reason that he would not, refused and declined to lease said lands to said Hall, as in said specification set forth.

But this respondent says: That before the application of said Hall was made, this respondent had leased said land to Isaac Cahn and John M. Eyrans, who at that time, had invested quite a large sum of money, and who were working and improving the same, and stated to said Hall that he could not lease to him without consulting them.

And this respondent denies that he has committed, or was guilty of a misdemeanor in office, as in said specification charged.

This respondent, for answer to the *Fifth Specification* in said article, says:

That it is true by virtue of his office as Governor, he was President and a member of the Board of Regents, known as the Regents of the University of Nebraska, and that the said Board of Regents have the power to

appoint a Treasurer. Respondent further says that it is true that about the day and year therein stated, the said Nelson C. Brock proposed to this respondent that if this respondent would procure him, said Brock, the appointment, and would use his influence to make him Treasurer of said Board, he would pay this respondent \$500. To which proposition this respondent made no reply whatever, and paid no further attention whatever to it—but alleges the truth to be that he made no agreement, had no understanding either directly or indirectly, but worked and voted against said Brock, and in favor of the present Treasurer, John L. McConnell; and therefore denies that he, in that regard, committed and was guilty of a misdemeanor in office, as in said specification charged.

This respondent, for answer to the *Sixth Specification* in said article, says:

That he denies each and every allegation in said specification contained, and alleges the truth to be that he held no conversation with said Brock upon the subject—he never received a cent from said Brock—worked and voted against said Brock and in favor of John L. McConnell, as hereinbefore stated; and denies that he committed and was guilty of a misdemeanor therein, as in said specification stated.

This respondent for answer to the *Seventh Specification* in said article, says:

That it is true that by the act entitled, An Act as set forth in said specification, approved February 15th, 1869, this respondent was one of the Commissioners authorized to locate the State Lunatic Asylum, at or near the town site of Lincoln, and which was located by said Commissioners, but this respondent distinctly denies that he received from one Dr. French, or any other person or persons, a conveyance of any land or property of any kind at a price far below its value, as an inducement and bribe to influence this respondent's action and decision relative to the location of said Asylum—and by which he was improperly and corruptly influenced to make said location, but alleges the truth to be that after the location was agreed upon and understood, the personal friends of the Commissioners

sold to them jointly a seventy-five acre tract of land in the vicinity of said location, at \$10 per acre, stating and proclaiming that they were anxious to have the officers of the State interested in that locality, and that they could afford to sell said land at that price. Respondent denies that in the location of said Asylum, or in any act connected therewith, he was acting in the capacity of Governor, or performing any of the duties or functions belonging thereto—but was acting as one of the Commissioners in connection with the other two, and therefore submits to this honorable Court whether any or either of this respondent's acts or doings as Commissioner, and not as Governor, should be tried and considered by this high and honorable Court; and this respondent denies that he has committed, and was guilty of a misdemeanor in office, as in said specification charged.

This respondent, for answer to **ARTICLE THIRD** in said Articles of Impeachment, says:

That it is true that for the time therein stated, Champion S. Chase had been the Attorney for the State of Nebraska, and as such Attorney, had rendered certain services for said State, and it was the duty of this respondent to determine what compensation for such services was fair and just, and according to what was paid in similar cases, but this respondent distinctly denies that he did, at the date therein stated, or at any other time wilfully, falsely and corruptly determine and represent to the Auditor of said State, that he, this respondent, deemed the sum of \$2,000 to be a just and fair compensation for said services, and denies that he wilfully, corruptly and unlawfully induced said Auditor to issue two certain warrants for the sum of \$1,000 each, under the pretense that the same were issued for the services of said Chase, as in said articles charged and set forth.

But at the date of the issuing of the two warrants aforesaid, the State was indebted to said Chase in the sum of about \$1,500, and said Chase was still in the employ and service of said State, and this respondent, then and there believed, would continue as such Attorney; and after the issuing of

said two warrants, this respondent went to said Chase and delivered to him one of said warrants, then and there stating to said Chase that he would be in need of some money with which to enter for the State certain Saline lands, no money having been appropriated for that purpose, and that if he, said Chase, would not object, he would retain the other warrant until this respondent returned from Washington, whither he was then bound—to which said Chase gave his consent; and this respondent further represents, that upon his return from Washington, this respondent determined to appoint Seth Robinson in the place of said Chase, and thereby end and determine the services of said Chase; and to that end settled with said Chase up to that date, and afterwards caused a warrant to be issued to said Chase for the amount found due him, having previously, but after the appointment of said Robinson, paid the money received on one of said warrants into the State Treasury, and caused the same to be cancelled, having entered the Saline lands with an unexpended balance of money, appropriated for that purpose in 1867, but of the existence of which this respondent was not previously aware.

And this respondent most distinctly denies that he did wilfully and corruptly appropriate to his own use, one of said warrants or the proceeds thereof, or any part thereof, contrary to his duty and oath of office, as in said article charged, and denies that in that regard he has committed, or was guilty of a misdemeanor in office.

For answer to the **FOURTH ARTICLE**, the respondent admits that the Commissioners named in said article, entered into a contract with one Joseph Ward for the erection of the Lunatic Asylum, and that said Commissioners in said contract, exceeded the amount appropriated for the same.

But this respondent alleges that said Commissioners made said contract in the full belief that they would be able to realize from the sale of the unsold lots and land of the State, appropriated by the act in said article mentioned, money sufficient to liquidate the demand of said contract, according to the terms thereof, and the respondent

alleges that the said unsold lots and land, will sell for a much larger sum than is necessary to pay the remaining amount due on the same.

And the respondent further says that by a joint resolution of the Legislature of this State, approved March 4, 1870, the said Legislature, after a full and thorough investigation of all the facts pertaining to said transaction (as well as others) fully endorsed, approved, ratified and confirmed the same.

But this respondent expressly denies each and all allegations in said article, not hereinbefore answered, and the respondent submits that all of his acts in the premises were done and performed in his capacity as one of said Commissioners, and not in his official capacity of Governor of said State, and that by reason thereof, he is not called upon to answer said article.

Wherefore, this respondent denies that he did commit, and was guilty of a misdemeanor in office, as therein set forth.

For answer to the FIFTH ARTICLE, the respondent admits that in the year 1869, he was a member of the Board of Regents of the University of Nebraska, and that he was *ex officio* President of said Board, but the respondent denies that he did wilfully and recklessly assent and become a party to a contract for the erection of said University and Agricultural College, and denies that he committed, or was guilty of a misdemeanor in office in that regard.

But this respondent alleges the truth to be that the Board of Commissioners for the construction of Public buildings, did make a contract with said D. J. Silver & Son, dated in August, 1869, for the erection of the State University, and that the contract price for said University Building was in excess of the appropriation made therefor; but the respondent says that said contract was made in good faith, and for the reason set forth in the answer to the fourth article. And this respondent further says:

That by a Joint Resolution of the Legislature of this State, approved March 4th, 1870, the said Legislature, after a full and thorough investigation of all the facts pertaining to said

transaction, fully endorsed, approved, ratified and confirmed the same.

But the respondent expressly denies each and every allegation in said article, not hereinbefore answered, and the respondent submits that all of his acts in the premises were done and performed in his capacity as one of said Board of Commissioners, and not in his official capacity as Governor of said State, and that by reason thereof he is not called upon to answer said article.

Wherefore, this respondent denies that he did commit, and was guilty of a misdemeanor in office, as therein set forth.

And now comes respondent, and for answer to the SIXTH ARTICLE, says:

He admits that at the present session of the Legislature, in the month of January last, the House of Representatives of the State of Nebraska, passed the resolution as set forth in said article, and admits that the same was communicated to him, at the time therein set forth, and further admits that his communication to the House in answer to said resolution, is the same as set forth in said article.

But denies that his said answer to said resolution is untrue; denies that he intended in said communication to deceive the House of Representatives, the Legislature and the people of said State, as set forth in said article.

Denies each and every allegation set forth in said article, except those which have heretofore been expressly admitted.

Wherefore, respondent denies that he committed, and was guilty of a misdemeanor in office, as charged in said article.

This respondent, for answer to the SEVENTH ARTICLE contained in said Articles of Impeachment, says:

That it is true that by the act entitled An Act as in said article set forth, approved February 15th, 1869, the respondent, in conjunction with the Land Commissioner and Treasurer of said State was empowered and authorized to invest certain funds received by such Treasurer, as advance or full payment by the purchasers of School Land, in United States or other good and sufficient securities, which securities should bear not less than six per

cent. annual interest; but this respondent distinctly denies that he wilfully and unlawfully did advise and consent to the loaning of such funds in divers sums and to divers persons, and did cause the same to be loaned improvidently, recklessly and without any authority of law and regard to public interests, and upon totally insufficient and inadequate security, and without the concurrent action thereon by said Treasurer and Land Commissioner, as charged in said article:

But alleges the truth to be that in every instance where a loan of such fund was made, it was with the consent and concurrence of the Land Commissioner and Treasurer, and in the utmost good faith to the State, and upon perfectly good and reliable security.

Wherefore, this respondent denies that he committed, and was guilty of a misdemeanor in office, as therein set forth.

This respondent, in answer to the *First Specification* in said article, says:

That this respondent, in conjunction with the Land Commissioner and Treasurer, about the date set forth in said specification, consented to loan to one Anson C. Tichenor and Amanda F. Tichenor, his wife, \$10,000 of said school money, which sum was so loaned to him, and to secure the payment thereof to said State, together with interest on said sum, they, said Anson C. Tichenor and Amanda, his wife, executed in due form of law, and delivered to the said State, a mortgage upon certain property in Lincoln, Nebraska, known as the Tichenor House and premises, and it was a condition in said mortgage that the said mortgagees should insure said premises in some good and responsible Insurance Company, in the sum of 12,000 dollars for the benefit of said State, in case of loss, which was accordingly done, said loan being for the term of five years from the date thereof, which mortgage was duly acknowledged and recorded in the office of the County Clerk of Lancaster County, in book — of mortgages, page —, which mortgage, or the asks record thereof, this respondent leave to produce and read, at the hearing of this cause.

This respondent alleges that at the time said money was loaned, he, together with the Land Commissioner and Treasurer, regarded the security as perfectly safe and reliable, and this respondent still believes and alleges the truth to be that the property aforesaid is a sufficient security for said claim, and this respondent denies that said security was wholly inadequate and insufficient, and that this respondent knew that to be the fact at the time of said loan, as in said specification charged, and alleges that they had full authority to make said loan under and by virtue of the law, and denies that he committed and was guilty of a misdemeanor in office, as in said specification charged.

This respondent, for answer to ARTICLE EIGHT, says:

That he denies each and every allegation therein contained, and that the same are untrue, and denies that he committed, or was guilty of a misdemeanor in office, as charged in said article.

This respondent, for answer to the NINTH ARTICLE, says:

That the matters and things, as therein set forth, are not true, and states the facts to be, that by an act entitled An Act to donate seventy-five sections of the Public Lands of the State to the Northern Nebraska Air Line Railroad, approved June 20, A. D. 1867, the land in question was donated to said company.

That the said railroad company, on or about—day of—consolidated with the Sioux City and Pacific Railroad Company, under the name of the latter Company, and in accordance with law made and provided in such cases.

That the said company did, in pursuance of said act of June 20th, 1867, construct their said railroad from De Soto, Washington county, to Fremont, in Dodge county, State of Nebraska, as required by said act.

And that the Patents executed and delivered by respondent to said railroad company, were so executed and delivered, in pursuance of the said act above referred to, the land having been previously set apart as required by section second of said act, and denies that he was guilty of any misdemeanor in office, as in said article charged.

For answer to the TENTH ARTICLE, the respondent denies each and every allegation in said article contained, except such of said allegations as are hereinafter admitted, and he especially denies the allegation that he ever converted to his own use and benefit any of the moneys accruing from the sale of the lots or lands, or any other property of the State. But the respondent says that it is true that the Commissioners have, in a few instances, sold lots in Lincoln at private sale, to persons who would and did earnestly interest themselves in advancing the interests of Lincoln, and thereby promote the interests of the State by enhancing the value of real estate in said town.

But this respondent alleges that in every instance where lots have been disposed of at private sale, they have brought better, or as good prices, than if they had been sold at public auction.

But the respondent insists that the allegations in said articles are so vague, indefinite and uncertain that he ought not to be called upon to answer the same.

Wherefore, this respondent denies that he did commit, or was guilty of a misdemeanor in office, as therein charged.

And for answer to *Specification First*, the respondent admits the sale of the land therein described to James Germans.

But he denies each and every other allegation in said specification contained, but says that each and every act in and about said transaction, was done in connection with the other Commissioners in his capacity as such Commissioner, and not as Governor, and he denies that he has committed, or is guilty of a misdemeanor in office, as therein charged.

For answer to the ELEVENTH ARTICLE and Specification therein set forth, this respondent admits that by said act referred to in said article he was made Commissioner, in conjunction with the Secretary and Auditor of the State, to sell the unsold lots and blocks in Lincoln, but denies that in the discharge of the duties of such Commissioner, between the 15th day of February, A. D. 1869, and the time of exhibiting these articles, that

he was guilty of corrupt practices and misdemeanors in his office of Governor, and says that the corrupt practices therein set forth, are wholly untrue—denies each and every allegation and matter and thing set forth in the *First Specification* to said article, and says the same is untrue as therein set forth, and states the fact to be that on the — day of June, A. D. 1869, at public sale, and in pursuance of and in accordance with an act of the Legislature, approved June 14th, 1867, an act to provide for the location of the seat of government of the State of Nebraska, and for the erection of Public Buildings thereat, the said lots seven, eight, nine, ten, eleven and twelve in said block, one hundred and fifty-one, in Lincoln, Nebraska, were at said public sale sold to the highest bidder, and that your respondent became the purchaser of said lots for the sum of one thousand dollars, which was duly paid to the proper officer of the State; that owing to the fact that by the 6th section of said act, and the Constitution of the State, it was made the duty of respondent, as such Governor of Nebraska, to make and execute all conveyances for the lots so sold under said act, and respondent having the right in all cases in which he purchased lots at said public sale, to hold the same as his own, and the law failing to make any provisions in such cases, for deeds to be made to respondent, respondent after having purchased said lots at public sale as aforesaid in good faith, sold, them, as he had a right to do, to one Andrew J. Cropsey, as set forth in said specification, and did cause a deed therefor, in the name of the State to be made direct to the said Andrew J. Cropsey. Denies that any of the money so received from the said Andrew J. Cropsey belonged to the State of Nebraska, or that he ever appropriated any money belonging to the State to his own use and benefit, and denies that he did then and there commit and was guilty of a misdemeanor in office.

And this respondent excepts to the sufficiency of the following articles and specifications, to wit:

Article Second and Specifications First, Second, Third, Fourth, Fifth, Sixth and Seventh of said article. Articles Fourth, Fifth and Seventh, and

Specification First of said Seventh article.

Article Tenth and Specification to the same.

Article Eleventh and Specification to the same.

And for his grounds of exception would state, that none of the acts and matters and things charged in said articles and specifications, are shown to have been done by said respondent, as Governor of the State of Nebraska.

And submits to this honorable Court whether this respondent should be compelled to answer said articles and specifications, or either of them.

And this respondent further excepts to said articles and specifications, and to each of them, for the reason that they do show that he, this respondent, has not committed a misdemeanor in office.

And this respondent insists that for all acts done and duties performed or omitted as one of said commissioners, he ought not to be called upon to answer in this honorable Court, because he says that the Legislature of this State did, by a joint resolution, approved March 4th, 1870, after a full, thorough and complete investigation of all the facts pertaining to the transaction of said commissioners, up to that date, fully endorsed, approved, ratified and confirmed, all of the acts, doings, and proceedings of said commissioners in the premises, and the respondent will ask leave of the Court to read said resolution, on the trial of this cause.

And this respondent will also ask leave of the Court to read the report of the Committee appointed by the Legislature to make such investigation.

And finally this respondent, having fully answered to the merits of all the allegations contained in the several articles and specifications exhibited against him, comes now and submits to this honorable Court, whether he shall be held to answer any of said articles or specifications, and this respondent insists that he ought not to be held to answer the same, because the acts, doings, and omissions complained of are alleged to have been committed or omitted, prior to the commencement of his present term of office of Governor.

And this respondent, in submitting to this honorable Court, this, his answer to the articles of impeachment exhibited against him, respectfully reserves leave to amend and add to the same, from time to time as may become necessary or proper and when, and as such necessity and propriety shall appear.

DAVID BUTLER.

CLINTON BRIGGS,

JOHN I. REDICK,

T. M. MARQUETTE,

*Of Counsel for Respondent.*

On motion the answer was received and ordered filed.

Mr. Gerrard moved that the following order be adopted:

"That the Managers on the part of the House of Representatives in the trial of the impeachment of David Butler, Governor of the State of Nebraska, be required to file their replication to the answer of said Butler, on Friday the 10th of March, 1871, at 10 A. M.

That the trial of the impeachment of David Butler, Governor of the State of Nebraska, shall proceed on Monday, March 13th, 1871, at 10 A. M., and shall continue from day to day till the same is completed, unless otherwise ordered by the Senate.

Manager Myers said that the Managers were willing that the first part of the order be adopted, fixing to-morrow morning for the time of filing their replication, but objected to fixing the time for the trial to proceed at present.

Mr. Marquette urged the adoption of the order, and said that it was due to the respondent, and in accordance with all the precedents, that the time of the trial should be fixed when the issue is made up, and referred to the declaration of the Managers, on Tuesday, that they were ready to proceed to trial without delay.

Mr. Myers denied that the Managers wished to delay the trial, but wished the order to be deferred till to-morrow.

Manager Doom thought that the Managers might not be able to file their replication by to-morrow morning.

Mr. Briggs said that the course of the respondent in this matter was unprecedented in impeachment trials; that in all other cases the respondents have asked time, but that the counsel for the Governor asked no delay, but are ready to proceed immediately.

Mr. Redick said that he was not here to make a reputation for himself, that he did not want time to ransack the libraries for a great speech, but to defend David Butler and deliver him from the fangs of his pursuers as speedily as possible; that he would like to go home, and that he had no doubt Mr. Manager Myers would like to go home, but that he also wanted David Butler to go home.

Manager Porter reported that the Managers were not desirous of delaying the trial, but they object to haste, that they might have an opportunity to summon witnesses, &c.

Mr. Redick said that upon consultation with the other counsel he would announce that Tuesday at 3 o'clock P. M. would be satisfactory.

The Managers assented to that time.

The question of adopting the order being divided, the 1st part was adopted.

Mr. Hascall moved to amend the 2d section of the order by inserting Tuesday at 3 P. M. instead of "Monday."

Mr. Hilton moved to amend by inserting Tuesday at 10 A. M. Lost.

The amendment of Mr. Hascall was adopted.

The order as amended was, on motion, adopted.

Manager Myers gave notice that the Managers had employed Messrs. E. Estabrook, E. Wakely, and G. H. Roberts, Attorney-General, as counsel.

The counsel for the Governor and the managers asked for an order to be made for a precept to subpoena witnesses, which was consented to.

Manager Doom asked for a rule that other persons beside the Sergeant-at-Arms be allowed to serve subpoenas and orders.

The chair decided that no such rule could be adopted without the consent of the Senate.

Mr. Doom requested that the rules be modified so that service could be had by other persons.

Mr. Gerrard moved to insert in the last paragraph of section 23, of the rules the words "President of the Senate." Adopted.

On motion the Senate sitting as a court of impeachment adjourned.

#### Senate.

Friday, March 10.

Sitting as a court of impeachment for the trial of David Butler, Governor of Nebraska.

The Sergeant-at-Arms made the usual proclamation.

The Managers of the House appeared and read the replication to the answer of the respondent, which was put on file. Adjourned.

#### REPLICATION

**By the House of Representatives of the State of Nebraska, to the answer of David Butler, Governor of the State of Nebraska, to the Articles of Impeachment against him, by the House of Representatives.**

The House of Representatives of the State of Nebraska, have considered the several answers of David Butler, Governor of the State of Nebraska, to the several articles of impeachment against him, by them exhibited, in the name of themselves and of all the people of the State of Nebraska, and reserving to themselves all advantage of exception to the insufficiency of his answers to each and all of the several articles of impeachment exhibited against the said David Butler, Governor of the State of Nebraska, do deny each and every averment in said several answers or either of them, which denies or traverses the acts, intents or misdemeanors charged against said David Butler, in the said articles of impeachment, or either of them; and for replication to said answer, do say that said David Butler, Governor of the State of Nebraska, is guilty of the misdemeanors mentioned in said articles, and that the House of Representatives are ready to prove the same.

G. W. COLLINS,

Speaker of the House  
of Representatives.

F. M. MACDONAGH,  
Chief Clerk of the  
House of Representatives.

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**PROCEEDINGS**  
**OF THE**  
**IMPEACHMENT TRIAL.**

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**PART II.**

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# IMPEACHMENT TRIAL

OF DAVID BUTLER.

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## First Day's Proceedings.

TUESDAY, March 14—3 P. M.

President CUNNINGHAM. The hour having arrived, fixed by the Senate, for the commencement of the trial of the impeachment of David Butler, Governor of Nebraska, the Senate will resolve itself into a High Court of Impeachment, and the Sergeant-at-arms will make due proclamation.

SERGEANT-AT-ARMS. Hear ye! Hear ye! All persons are commanded to keep silence under pain of imprisonment, while the Senate is sitting as a Court of Impeachment for the trial of David Butler, Governor of Nebraska.

The Managers of the House of Representatives, the Governor, and his counsel, then appeared and were assigned seats in the chamber.

The secretary read the journal, which was approved.

Manager MYERS. Mr. President, —I ask that the secretary read the roll of witnesses and the returns made thereto, so that we may know who of the witnesses are present.

The secretary called the list, and Messrs. Cadman, Chase, Hall, Castle, Wood, Queen, Hudson, E. Clark and Cropsey, responded to their names.

Manager MYERS. Mr. President, —The Managers on the part of the House are not only willing but anxious to proceed to trial; but they are unwilling to do so in the absence of important witnesses.

Mr. BRIGGS. Mr. President. It is well known sir, that from the first the Governor has been desirous of having this trial proceed with all convenient dispatch. By his counsel he has filed exceptions to the several articles of impeachment preferred against him by the House of Representatives, and the sufficiency of those exceptions are.

Manager MYERS. Mr. President. The counsel for the Governor will understand that the question under consideration now is whether we shall proceed to trial in the absence of witnesses, and it is not proper for him to attempt to discuss the merits of the exceptions offered in behalf of the Governor.

The President called the attention of Senators and the Managers and counsel to Senate rule 21.

Mr. BRIGGS. One word, then, Mr. President. There is good reason why this trial should proceed.

Mr. REDICK. Mr. President. I suppose, sir, that the rules applied in courts of justice are the same as will

be observed for the admission of testimony in this case. The proposition of the House Managers to adjourn for the want of witnesses is not a very satisfactory one. If adopted, such proposition would enable them to prolong this trial to an indefinite period. They have four or five witnesses here now. Let them be examined, and then absent witnesses may be reached and brought here. Or, if the House Managers have affidavits, touching this trial, they may be heard. Let the House Managers make an affidavit as to why they want a continuance, and what they expect to prove by witnesses now absent, and then we will reserve to ourselves the privilege of admission or denial.

Manager MYERS. If the counsel for the Governor are willing to admit the testimony of McBird, Silver and others, which was taken before the Investigating Committee, the House Managers are willing to proceed immediately with the trial.

Mr. REDICK. We do not wish to be understood as saying that we are willing to admit those or any like affidavits. I think this trial should be conducted as in an ordinary court. If witnesses are absent, the counsel should give written notice of what they expect to prove, and perhaps we will admit all you expect to prove.

Manager DOOM. I am not willing to admit all the gentleman for the defense has to say about this case being conducted as an ordinary suit at law. If the defense will permit the published testimony of Mr. Silver and Mr. McBird to be read in evidence, we will proceed to trial.

Mr. MARQUETTE cited a certain case recorded, for the purpose of showing what is necessary to do in order to have a case continued. He understood that some of these wit-

nesses are out of the jurisdiction of this court.

Manager MYERS. We are not prepared to go to trial without these important witnesses. Individually, we are ready to go to trial now, but I appeal to you, Mr. President, is it doing justice to the prosecution to go to trial, when two-thirds of our witnesses are absent? I think it is unkind and unjust to force us to go to trial. I don't know where these witnesses are. They may be in this State, and they may be in Texas. [Laughter.] It seems rather curious that the defense should be so obstinate about going to trial without these important witnesses. I want these witnesses here, that they and the Governor may stand face to face, and the counsel for the defense have the privilege of cross-examining them. We don't want them to say that they did not have a chance to cross-question.

Mr. REDICK. I really see but little to talk about in this matter. My honorable friend, Myers, I am glad to say, is not a lawyer, or he would take a different view of the matter. If the prosecution will put in writing what they expect to prove by these witnesses, then we can say whether we will object or not. I am interested in this matter. If my client, the Governor, is convicted, I want to see upon what testimony this is done. Let us see what is necessary to be done in order to get a continuance. It is necessary to show the names of witnesses; where they reside; what you expect to prove by them, and why they are not here. It is hinted that we have run these witnesses away. We wish this charge fairly made that we may meet it fairly and squarely.

Mr. PORTER. The returns show that some of the witnesses were not found, and some of those who were

found have not answered to their names. I wish to remark, Mr. President, that the importance of this suit demands a fair and impartial trial, and I therefore present the following order: "In the case of the Managers on the part of the House of Representatives, in the case of the Impeachment of David Butler, Governor of the State of Nebraska, we ask the following order of the Senate: "That the said trial be continued sixty days from this time." If these witnesses can be found, we believe we can secure their attendance. We believe the people of the State cannot be justly dealt with, if we are compelled to go to trial at the present time. We have not been able to secure the attendance of certain witnesses without whom certain articles will have to go by default. The defense argue that it is necessary we should bring in, in writing, what we expect to prove by these witnesses. Now, Mr. President, what we expect to prove is a matter of record. If they are willing to admit the testimony already given by these witnesses, we are willing to proceed. I have placed the time at sixty days for continuance, because I believe that if a continuance is granted, it is better to ask time enough. Some of the gentlemen engaged here have other business on hand which should be disposed of in order for them to give their whole time to the trial.

The motion for sixty days' adjournment was put by the President.

Mr. REDICK. I ask permission to make two suggestions. The first legal point we wish to raise in this trial before you, gentlemen, is whether you can try Governor Butler and impeach him at this time, for acts done during the last term of office, and our second point is, that the acts were done in the capacity of a Commissioner, when it

took three to act, and not one, and we hold you cannot try him for any acts done as a Commissioner. If you should find our first point well taken, we think that would dispose of at least two of the articles; and on the second point about five more, leaving about four to be acted upon by this Court. It strikes me that if there is any rubbish here to be cleared away, that it ought to be done now, and not at the end of sixty days. We ask that this honorable body will first, before taking action upon the question of continuance, narrow down these articles to what you will try. Take that *Chase* transaction—that we do not want struck out. Nor the Griffy matter, the stealing of \$600, and the one in which Mr. Hall figures as a witness. Mr. Hall is here, and we want that matter investigated. If you vote to try him for his acts as a Commissioner, then we will meet that. If the Governor is to be tried on only those on which he ought to be tried, the trial can, we think, be speedily got along with; but if you decide that you will try the whole of these, you need not expect to get through before next year. All I ask is, that before you pass upon the question of continuance you will act upon the legal points in the case.

Manager MYERS. If all the speeches of the legal gentleman are to be as long in proportion as the present one, we expect this trial may last as long as that of Warren Hastings, which took several years. When these legal questions properly come before this court we are prepared to meet them. The gentleman has referred to the fact that the Managers in this trial are not lawyers. We are glad of it, for a lawyer has a poor reputation in this State, if I am to judge from the reputation that gentleman enjoys. If it strikes in it will certainly

kill him. They make lawyers here of very cheap material, considering the specimens that the Governor has employed in his case. Mr. President, I will not discuss this legal question now, as it is not properly before this Court.

**Mr. MARQUETTE.** Mr. President, we wish this matter to come properly before your honor. These witnesses, so far as we know, may be down here, at the hotel, or in the city. If a continuance is to be granted simply on the motion of the gentleman, with just as much ease and elegance they can come at the end of sixty days and make a motion to continue for two years, and so on, until the end of the term.

**Manager MYERS.** Will the gentleman allow me to interrupt him?

**Mr. MARQUETTE.** Certainly, sir.

**Manager MYERS.** We propose to let the gentleman know now why we ask for a continuance.

**Mr. MARQUETTE.** How? By your word only? We cannot take that. If the Senate will adjourn until seven o'clock, we will be prepared to return here and show this honorable body that they need not go into the uncertain trial of impeachment in this case.

**Mr. REDICK** presented the following:

"Mr. President—The counsel for the respondent move the Senate to proceed to consider and decide the exception contained in the answer relative to the case of the Governor as Commissioner, before proceeding to the trial or its merits."

**Manager PORTER.** It appears to me there is a matter before the Senate to be first disposed of, embodied in the motion made by the Managers on the part of the House. I have this to say, that if the counsel for the respondent desire and insist that we should make,

in writing, what we expect to prove by these witnesses, we are prepared with affidavits of that kind. It appears to me rather unusual in a case of this character, where there are managers appointed by the House of Representatives, that we make this statement to the Senate, and that statement corroborated by the returns of the officers, when we said we expect the testimony of those witnesses will be important, and we cannot proceed to the trial in their absence, ought to be regarded as having great weight—and if these returns have been brought in here, whether it is right to grant a continuance in this case. I am unwilling to enter into the case in its present condition; and I would refuse, under protest, to proceed. But if the Senate say so, I yield. I think it would be unjust to the prosecution to compel them to go into trial, and it will be unjust and useless to ask for this to be put in on affidavit. It is a question for the Senate to determine whether or not the continuance shall be granted.

Senator GERRARD offered the following: "*Resolved*, that the Senate do now retire for fifteen minutes to the Supreme Court room, for the purpose of considering the motions submitted by the counsel for the respondent and by the Managers of the House."

**Manager DOOM.** I would like to know whether they have fully presented all they desire.

**Manager MYERS.** I would say we have an affidavit on this point as to the "spiriting" away of the witnesses, and would like time to get that affidavit here, and show that we have cause for a motion of this kind, and that we did it with reluctance, and that we are to be cheated of our rights by our witnesses going beyond the jurisdiction of this court. I would like

the Senate to have that document in its possession.

**Mr. MARQUETTE.** An affidavit of that kind is entirely unheard of in any court, and if there is one, my colleagues and I shall desire to see it, and to be heard upon it.

**Manager DOOM.** We are perfectly at the mercy of the Senate; but if it is the decision to vote down the motion, or allow argument upon the exception, I would ask that the Senate make no final decision upon the motion.

**The PRESIDENT.** The question is upon the adoption of the motion of Senator Gerrard. The Secretary will call the roll.

Those voting in the affirmative were—Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, and the President.—13.

#### AFTER RECESS.

The Senators returned to the Chamber.

**The PRESIDENT.** After due deliberation the Senate has agreed to the adoption of the following:

*Ordered,* That the further consideration of the motion for a continuance submitted by the Managers be postponed, and that the Senate do first take up and decide the exceptions filed by counsel for respondent.

Those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant and Mr. President.

None voting in the negative.

**Mr. REDICK.** As it is now five o'clock, and Judge Briggs and myself have just arrived on the train, feeling somewhat fatigued, we would desire the Senate to take an adjournment till to-morrow morning, or, at least, till seven o'clock this evening. This is a

very important matter, and its consideration should not be jumped at on the spur of the moment.

**Mr. ESTABROOK.** The questions or propositions, three in number, coming from the counsel for the Governor, are—

**Mr. MARQUETTE.** We prefer to argue only the proposition as to the Governor's responsibility when acting as Commissioner, and—

**Senator TENNANT.** I move the Senate adjourn.

Agreed to, and the President adjourned the Senate till 10 o'clock to-morrow morning.

#### Second Day's Proceedings.

WEDNESDAY, 10 A. M.

The Senate met, and after roll call resolved itself into a Court of impeachment. The following Senators answered to their names: Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant and Mr. President.

The Sergeant-at-arms made the usual proclamation.

The Impeachment journal was read and approved.

**Mr. ESTABROOK.** Mr. President,—when the Senate took an order for adjournment yesterday afternoon, I was about making enquiry regarding the matters submitted by counsel for the respondent. But since that time, in private conversation with respondent's counsel, we have partially considered the propriety of arguing but one or two of the exceptions, particularly the one set up by counsel that the Governor, when acting as Commissioner, was not to be held responsible to this Court of Impeachment.

To this end I have prepared resolutions which, I think, meet the case in point, and cover all the ground necessary to be argued at this time.

Mr. REDICK. I would say to the gentleman that we are prepared to argue now the questions which the Senate, in its order yesterday, decided that we should argue.

The PRESIDENT. Under the ruling of the Senate, yesterday, it was decided that the grounds of the exceptions taken by respondent's counsel, should be heard in argument.

Senator HASCALL. The opinion of the Senate yesterday was, I think, that all of the exceptions should be heard in argument.

Mr. MARQUETTE. My understanding is the same as that of the Senator from Douglas, and respondent's counsel are willing to abide by the wishes of the Senate.

Mr. ESTABROOK. I do not raise the point—my resolutions, I think, reach the merits of the case, but are we to go back at all to hear testimony on this case which is not properly before the Senate? These are my resolutions, which I will read for information. They are copied, with a simple change of names, from a case heard before a sister State tribunal:

*Resolved*, That this Court on the trial of the impeachment now pending, have jurisdiction to enquire into offenses charged to have been committed as well during the former terms of office of David Butler, Governor of Nebraska, as into offenses charged to have been committed during his present term of his said office.

*Resolved*, That the Senate, sitting for the trial of the impeachment of David Butler, Governor of Nebraska, will receive such testimony as may be offered, touching the charges of misdemeanors in office, while acting as Commissioner under and by virtue of

an act entitled "an act to provide for the sale of the unsold lots and blocks on the town site of Lincoln, and for the location and creation of a State University and Agricultural College, and State Lunatic Asylum, approved February 15, 1869," as they are set forth in the articles and Specifications, exhibited against him before this body.

Mr. REDICK. Mr. President—I have had the pleasure of knowing the gentleman on the other side so long that I have got familiar with his kind of warfare. I think I can see the object of the gentleman in making this motion, which is to get the opening and closing of the argument on this question. We have these exceptions properly before this court on the motion of yesterday, and it was not necessary even to make that motion, as our exceptions stand on file before this court. On these exceptions and our motion we claim the right of opening and closing the arguments. This motion is made to take advantage of the defendant and shift this responsibility. This is another dodge of the gentleman, and one which any common lawyer, such as my colleagues, Mr. Briggs, and Marquette, and myself can see. The gentleman was made by God, in his opinion, to prosecute men—yes, sir. [He says, yes.] [Laughter.] I have no doubt that this idea was suggested to him by my friend Myers, but I don't care where it comes from. We shall ask and insist on the opening and closing. We have made some preparation in this case, as suggested by the Senator from Douglas, expecting that this court would act upon all these exceptions at the same time, and now to be compelled to take them up one at a time, would, at least, put us to considerable inconvenience. I hope this court will not cut off this defendant from the common rights belonging to the accused

in cases like this. If my friend has the closing of an argument, with nobody to reply to him, his imagination is as fertile as a hill of corn [laughter]; but he is not so good at building up when he knows there is some one to follow him with the privilege of tearing down. I would ask the gentleman one question: Is not this a similar action as that upon the quashing of an indictment?

Mr. ESTABROOK. No sir.

Mr. REDICK. He says it is not, and so makes issue upon that. We think this is similar, and that the rules of Courts in such cases should govern this Court in considering the question, which would be to have the argument of the counsel for the defendant, then that of the prosecution and the closing by the counsel for defendant, and then to pass upon the motion to quash, either sustaining it in part or as a whole, or rejecting it. This would be the mode of proceeding on the trial of any criminal, any horse thief. And is not the man who has had the confidence of the people so long, in an important trial, to have the same rights? This case should be governed by some of the land-marks known to the law. If the gentleman wants to get down to some 6th ward practice in this case, then count me out. The laboring oar is on us, and in every instance the gentlemen know that to be the rule, that we should have the opening and closing. The ruling of the Courts of the United States sustains us in our position. When I take the appeal and ask for the reversion of what the lower court had done, they recognize my right, and this resolution is introduced in here to shear Mr. Butler of a legal right he has. I hope you will not permit it, but hold us to the proposition you made yesterday. And if the gentleman offers this resolution for

any other reason, let him be frank enough to stand up before the Senate and state it. You have to talk to facts and stand up and face the music like David. And if Senators are sworn to do justice to that man (pointing to Butler) let it be done. The law is for us to show, for us to convince these men that we are right; that this man, Butler, cannot be impeached only for acts committed in his present term of office. We are here with our hands tied, when our friend on the other side has worked himself into this to tighten them up [Laughter].

Manager MYERS. Mr. President. I object to these personalities. This is too solemn a question to be joked upon.

Mr. REDICK. Yes, I will not be any more personal than my friend Myers, I will only try and equal him in personalities. I humbly beg his pardon. I recognize Mr. Myers as among the ablest men in this House. No man can manage a case of this kind as well as he. As a Manager he is a success; [Laughter] and I am sorry I have not got his ability. He has got the case, so far, into pretty good shape. I say to my friend, Mr. Estabrook, that we shall insist upon the opening and closing.

Mr. ESTABROOK. If the gentleman supposes, by witty monkey shines or humorous remarks upon this Board of Managers, that he is going to cover up this case and prevent a fair hearing from this Senate he is mistaken. This thing is to be fairly considered in this Senate, and if the gentleman has anything personal against any individual it would be in better taste to withhold it. This is a simple, plain, proposition. He states the motive with which I offer it. Sir, I have precedents, and I think I will be able to present one for nearly every proposition I shall



have to make. I shall be able to show the Court how these questions have hitherto been decided. And we have a precedent very near exactly in point to the one in this case. I have no motive, only simply to get the issue before this body. But, coming to the other proposition. I insist that the opening and closing are with us. It is not a motion to quash. It is purely a matter of pleading. Suppose we go on and show David Butler did a certain thing at a certain time, if shown on the other side by proof, by evidence introduced. If this Court says we cannot go back into former terms to make our evidence, a large proportion of these charges will fall; and a matter which contributes so radically to the whole defense as this does, is a matter where the prosecution should hold the opening and the closing. It is a well-settled principle of law that a prosecution does hold the opening and closing. Here, if it is a matter that should go to that extent to abate some portion of these proceedings, it is clearly a matter where the prosecution should hold the opening and closing both. Let me suggest one other point. And here we propose to offer a paper that will suggest to the Court that there may be some doubt as to what is meant by "terms of office." I would refer the gentleman to the law of 1867, where this whole matter was legislated upon, and where the commencement of the term of office, and the conditions by which a term should be held, are decided by the law.

[Upon request of Mr. Estabrook, Manager Doom read from the general laws of the State, as follows:]

Sec. 1. That all State officers elected at the June election, in the year 1867, who have not already taken and subscribed to and filed in the office of the Secretary of this State, the oath of

office prescribed in and by the twenty-fifth section of article second entitled "Legislative" of the Constitution of the State of Nebraska, are hereby required to take, subscribe to, and file the said official oath in the office of the said Secretary of State, within one day after the passage of this act. And in the event of any person or persons so elected to any office at the time aforesaid, failing to qualify and file the oath as hereinbefore provided, and to enter upon the discharge of the official duties pertaining to the same, the office to which the defaulting person was elected at said election shall be deemed vacant.

Sec. 2. The Governor, Secretary of State, Auditor and Treasurer, and such other State officers as may be provided for by law, elected at the general election for State officers, in the year A. D. 1868, and at any subsequent general election for State officers thereafter, shall qualify, as directed by the first section of this act, within thirty days after the time prescribed by the constitution, at which said officers shall enter upon the discharge of the duties of the office to which they were severally elected. In the event that any of the officers fail to qualify in the time prescribed, the office shall be deemed vacant."

MR. ESTABROOK. Then Governor Butler is still in office, from the fact of no other gentleman having been duly elected and qualified. David Butler, you cannot deny, was in office three or four years ago, and I say he holds this office until his successor is qualified. He holds the position of Governor, because of the oath of qualification taken four years ago. I will now read you the oath of office which David Butler took four years ago:

"I do solemnly swear that I will support the Constitutions of the United States and of this State, and faithfully and impartially perform the duties of the office of Governor according to law, and to the best of my ability, so help me God.

DAVID BUTLER.

Sworn and subscribed to before me, one of the Justices of the Supreme Court of the State of Nebraska at Lincoln on this 11th day of January, A. D. 1869.

L. CROUNSE,  
Associate Judge of the Supreme Court.

STATE OF }  
NEBRASKA, } ss.

I, Wm. H. James, Sec'y of the State of Nebraska, do hereby certify that I have carefully compared the foregoing copy of the oath of office of David Butler, Governor of Nebraska, with the original now on file in the Secretary's office, and that the same is a true and perfect copy of said oath of office.

In witness whereof I have hereunto set my hand and affixed the great Seal of the State of Nebraska.  
Done at Lincoln this 14th day of March, A. D. 1871.

WM. H. JAMES,  
Secretary of State."

Now comes this other document, going to show that no official oath of David Butler, as Governor, has been put upon record since.

*State of Nebraska, Secretary's Department.*

I, Wm. H. James, Secretary of State for the State of Nebraska, do hereby certify that no official oath of David Butler, Governor of Nebraska, has been filed in this office, since I have been Secretary of State.

In witness whereof I have hereunto set my hand and affixed the great seal of the State of Nebraska.

Done at Lincoln this 14th day of March, A. D. 1871.

W. H. JAMES,  
Secretary of State."

It seems from that, Mr. President, there is nothing appearing since the oath taken by Governor Butler, in 1869.

Manager PORTER. Mr. President. The counsel for respondent, if I understand correctly, have charged that there is no precedent for the position we have taken in this matter, in reference to the introduction of these resolutions. I have here the report of a

trial of impeachment in the State of Wisconsin, against Levi Hubbell. I quote from page 70 of the report:

"Mr. KNOWLTON. I have two questions which I wish to submit to the Court; two legal propositions which, as counsel for defendant, I am not at liberty to waive.

1st. Whether this court has the constitutional jurisdiction to act upon charges of impeachment preferred by the Hon. The Assembly; and

2d. If it has such general jurisdiction, whether that jurisdiction must be confined to charges of offenses committed, or alleged to have been committed by the respondent, in or during the exercise of the office which he now holds or whether it can consider charges for offenses or crimes committed or alleged to have been committed during the existence of his term of office, either as a judge of a circuit or supreme court, after such term has expired."

Manager PORTER. Now it seems to me that in that trial, a similar position was taken to that taken by the counsel in this trial. They allege that this court has no right to look into acts committed in a former term of office. In the case cited, Mr. Dunn moved the following resolutions:

*Resolved*, That this court has the constitutional jurisdiction to try an impeachment preferred by the Hon. "The Assembly of the State of Wisconsin."

*Resolved*, That this court, on the trial of the impeachment now pending, have jurisdiction to inquire into offenses charged to have been committed, as well during the former term of office of Levi Hubbell, Judge of the 2d Judicial Circuit of this State, as into offenses charged to have been committed during the present term of his said office."

In the decision of that question, the first of the resolutions introduced by Mr. Dunn was adopted unanimously; the second, adopted by a vote of 19 to 5. Now then, Mr. President, how are we to decide this question if we go into an argument upon the point

raised by the question? In the case cited, a resolution was adopted by the Senate, touching this point, and we claim the merit and force of the precedent.

**Mr. MARQUETTE.** In the case of Blount, in the United States Senate, the whole merits of the case were argued on the opening of the case on a plea put in by respondent that he was not then a Senator; "that, although true it is, that he, the said Wm. Blount, was a Senator of the United States from the State of Tennessee, at the several periods in the said articles of impeachment referred to; yet that he, the said Wm. Blount, is not now a Senator, and is not nor was at the several periods referred to, an officer of the United States; nor is he, in and by the said articles, charged with having committed any crime or misdemeanor in the execution of any civil office held under the United States, or with any misconduct in any civil office, or in the abuse of any public trust in the execution thereof.

**Mr. ESTABROOK.** The plea set forth in the Dunn case, which my friend alludes to, was one of general denial.

**Mr. MARQUETTE.** I am not going to say now, whether David Butler was elected or not. I would not so insult the intelligence of the members of the Legislature, who were present and heard David Butler qualified. The records of your body show that to be true. The filing of the oath in the Secretary's office is simply directory, and that written proof may be preserved of the fact that the Governor has been duly qualified and inducted into office. The Managers of the House, in coming in at this early hour with this declaration, are proving too much. They would prove that David Butler is not now Gov-

ernor, and as a consequence, they would turn him out of this tribunal, for certainly it could have no jurisdiction over him. [Mr. Marquette again read the plea put in by Senator Blount.] In that case there was no contention as to who should open and close the argument.

**Mr. ESTABROOK.** Will the gentleman say who opened the case?

**Mr. MARQUETTE.** The Managers. But the counsel for the respondent offered no objection, perhaps not deeming the point of any magnitude. In this case, however, the respondent's counsel will yield no right to which they feel themselves entitled.

**Mr. BRIGGS.** I would ask the gentlemen managing the trial of the impeachment of the Governor, whether the whole question of law is not already presented without a resort to the expedient they bring up this morning? In their propositions they refer to acts alleged to have been committed by David Butler when Governor in 1869. Now, sir, in all courts of justice there are certain matters of which official notice is taken. For instance, the courts take official notice of the executive officers who administer the state government; of boundary lines, and other subjects of which there is written record.

**Mr. ESTABROOK.** I would like to ask the respondent's counsel [Mr. Marquette] just here, if he deems it a sufficient compliance with the provision of the constitution which requires that the "Governor shall take and subscribe an oath," to simply hold up his hand and swear? The case referred to by the gentlemen is an unfortunate one. When Judge Blount was on trial there were giants in those days. One of them, Mr. Baird, the chairman of the Committee of Managers, was a

man of intellect—a man to whom Story in his commentaries, and Rawle had awarded the credit of being high authority, although his speech was *ex parte*. Judge Briggs, I think, is too shrewd a lawyer to say that a plea put in will give any defendant the right to open and close the argument. I wish the gentleman would continue to furnish his authorities. The decision in the Blount case referred to, supports us, and if that is to be taken in this case it gives to us the right of opening and closing. It seems to me, may it please this honorable Senate, that it is authority directly in point, and concludes this question.

The PRESIDENT. The Secretary will read the resolutions offered by the Managers. (Resolutions read).

Senator HASCALL. Mr. President, I move that the Senate retire 15 minutes for the consideration of the resolutions.

The motion was sustained, the following Senators voting in the affirmative: Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant and Mr. President. None in the negative.

The PRESIDENT. The Senate will retire 15 minutes for consultation.

#### AFTER RECESS

the Senate returned to the Senate Chamber.

The PRESIDENT. The Senate will come to order. Gentlemen the Senate have had under consideration the application submitted by the Managers and have adopted the following order:

“Ordered. That the parties proceed to argue the exceptions in the case as ordered upon yesterday, and that the counsel for the respondent have the opening and closing.”

Senator HASCALL. Mr. President, I move that the Senate adjourn until 2 P. M. Adopted.

The PRESIDENT. The Senate will take a recess until 2 P. M.

#### AFTERNOON SESSION.

At 2 P. M. the Senate was called to order. Present.—Senators Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker and Mr. President.

Absent.—Senator Tennant.

The PRESIDENT. Gentlemen, under the order adopted by the Senate, the Senate will hear and decide upon the exceptions filed by the counsel for the respondent, on the articles of impeachment. The chair will call the attention of the gentlemen to the 19th rule, which reads as follows: “All preliminary or interlocutory questions and all motions, shall be argued for not exceeding one hour on each side, unless the Senate shall, by order, extend the time.”

Mr. BRIGGS. Mr. President, I hardly think that the rules should apply in the argument of this question, which involves the points at issue in this case. I think the time ought to be extended to the counsel on both sides. I intend to be brief myself, but before I proceed, I would like if the Senate would extend the time to two or three hours.

Mr. REDICK. Under that rule, if the articles were taken up one at a time, we would certainly have an hour on each, and when considered together we ought to have at least three hours on either side. I would beglad if the Senators would extend the time.

Senator HASCALL. I move the time be extended one half hour.

(Motion stated by the chair.)

Senator TUCKER. Mr. President, I move to amend so that they will be allowed three hours on each side.

The PRESIDENT. The question is on the amendment of the gentleman from Johnson.

Senator THOMAS. I understand the motion applies to this particular question, and of course does not set aside the rule.

Senator HASCALL. My motion is that the time in this particular case be extended one half hour.

The PRESIDENT. The Chair requests the gentleman from Johnson to send up his motion in writing. The Secretary will please read the amendment.

The Secretary read the following amendment:

Ordered that in the argument of the exceptions, the Counsel and Managers have such time as they may deem necessary, not exceeding three hours each.

Roll was called, the following Senators voting in the affirmative: Brown, Cropsey, Gerrard, Hawke, Hilton, Thomas, Tucker and Mr. President. And the following voting in the negative: Hascall, Metz, Kennedy and Sheldon.

The PRESIDENT. On the motion, eight Senators voting in the affirmative, and four in the negative, the amendment is adopted. The question is now on the motion as amended.

Roll called, the following Senators voting in the affirmative: Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Sheldon, Thomas, Tucker and Mr. President. Mr. Kennedy voting in the negative.

The PRESIDENT. Eleven Senators having voted in the affirmative and one in the negative, the motion is adopted as amended.

MR. BRIGGS. Mr. President, it is hardly necessary for me to state to you that I am fully impressed with the importance of the work that has been assigned to me by my colleagues in opening this case; but without indulging in any introductory or pre-

liminary remarks, I propose to proceed at once to the consideration of the exceptions which are interposed by our answer; and if the Senators will pardon me, I will take the last exception contained in the answer instead of in the order in which they are printed. I will read:—

“And finally this respondent, having finally answered to the merits of all the allegations contained in the several articles, and specifications exhibited against him, comes now and submits to this honorable Court, whether he shall be held to answer any of said articles or specifications, and this respondent insists that he ought not to be held to answer the same, because the acts, doings and omissions complained of and alleged to have been committed, or omitted, prior to the commencement of his present term of office of Governor.”

The reason why I desire to consider this exception first, is, that it really should have been put first in order in the answer; because if this exception is well taken, the other exceptions become immaterial. This exception covers the acts which are alleged to have been committed by the respondent prior to his present term of office, as also the acts alleged against him in his capacity as Commissioner, I certainly am thankful to Senators for having extended the time beyond the hour limited by the rules. I do not expect, however, on my part, nor the gentlemen associated with me, will consume the time which has been allotted to us. But we feel, in view of the importance of the question we have to consider, that we ought, at least, to have ample time to do justice to the subject as far as we are capable. The Constitution of this State, of course, must be our guide, and I will read two sections of the Constitution, which invest this Senate with power and jurisdiction to try the

same. I read sections 28 and 29, page 8:—

“Sec. 28. The House of Representatives shall have the sole power of impeachment, but a majority of the members elected must concur therein. Impeachment shall be tried by the Senate; and the Senators, when sitting for that purpose, shall be on oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two thirds of the Senators.

“SEC. 29. The Governor, Secretary of State, Auditor, Treasurer, and Judges of the Supreme and District Courts, shall be liable to impeachment for any misdemeanors in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under this State; but the party convicted or acquitted, shall, nevertheless, be liable to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office in such manner as the Legislature may provide.”

We have filed, it is true, an answer to the merits of this case. We have answered each and every article and specification exhibited against us, for the reputation of the respondent, as a man, demanded this. We have answered to the law involved in each of these answers and specifications. It was his duty to do this because of the fact that he was Governor of the State of Nebraska. He would be unworthy of the high trust which has been imposed in him, did he not, when his right to hold the position was called in question, avail himself of the law to protect his office. He must not yield simply because he is assailed; he must, if retired, do so in obedience to law. It will be our duty to consider the nature of this impeachment. It seems to me that we must all of us, have a vague and indefinite idea upon this subject—an idea mainly derived from English precedent. We have

heard of the famous trial of Warren Hastings, that most celebrated trial, and having the most wide-spread notoriety of any State trial that has occurred in the history of any nation. From that case the position is sought to be deduced that a person can be impeached for misdemeanors or for high crimes just as well when he is out of office as when he is in. For we are told, Warren Hastings had ceased to be Governor General of India before the articles of impeachment were presented against him, and that is given as a precedent to show that in this country and this State any man who has once held an office, if he has committed misdemeanors in that office, can be called in to answer for them; although, at the time the House of Representatives prefers the articles against him and at the time of the trial, he be only a private citizen, now we stand here to controvert that position. While that was so in England it is not so in this country. And we propose to show, by the authorities, that the position I have taken cannot be successfully assailed. Then, again, the case of Lord Bacon is cited, where he had been impeached. Why is this? Because in England, as you gentlemen know, every subject of the realm was subject to impeachment whether an officer or not. The object of the proceeding was not for the purpose of removing a man from office, but the sole purpose, and the principal and primary object was punishment. And if you take the trouble to examine the cases, (I think the first one occurred in 1350, the case of Roger Mortimer), down to the case of Queen Caroline, in 1820, the principal object in view was to punish the offender. And the punishment inflicted was of the most extraordinary, and sometimes, the most severe character.

Death was a very common penalty. Cases can be cited where men have passed from the judgment of the House of Lords to the scaffold, and then, not only was the penalty of death inflicted, but an object beyond that was attained—the property of the accused was confiscated; not only was this done, but his children could not inherit the property. In England, punishment was the object; punishment of the most vindictive kind. There it was not, as in this country, simply a removal from office. Let me just read the form of a judgment of the House of Lords in England:

“Floyd was adjudged to be degraded from his gentility, and to be held an infamous person; his testimony not to be received; to ride from the Fleet to Cheapside on horseback without a saddle, with his face to the horse’s tail and the tail in his hand, and then to stand two hours in the pillory, and to be branded in the forehead with the letter ‘K;’ to ride four days afterward in the same manner to Westminster, and there to stand two hours more in the pillory, with words on a paper in his hat showing his offense; to be whipped at a cart’s tail from the Fleet to Westminster Hall; to pay £5,000 fine and to be a prisoner at Newgate during life.”

This judgment was pronounced during the reign of James the first.

I am not going to take up the time of the Senate with these precedents, but I wish to call your especial attention to this fact. When the Constitution of the United States was framed, all these bloody annals were before the framers of that instrument, and fresh in their recollection. And what did they do? Our fathers, in the organic law of the nation, placed this matter especially, so that it could not be mistaken, providing that judgment because of impeachment should extend only to removal from office and

disqualification from holding office. Now can there be any question about this? Are we not justified in throwing aside these English precedents bearing upon these questions? We will be told by the other side, of the famous case of Warren Hastings. But it was really the splendid talents of Edmund Burke which made this case so famous, for the accused was acquitted of each and every one of the articles of impeachment brought against him. But this is general reasoning. I have not read you any authority. Of course I do not expect my simple word to amount to much, for I am an attorney in the case; but I am prepared to refer you to the writings of a man familiar to you all, especially the attorneys in this case—Judge Story. I quote:

SEC. 782. [Story on the Constitution.] In England, the judgment upon impeachments is not confined to mere removal from office; but extends to the whole punishment attached by law to the offence. The House of Lords, therefore, upon a conviction, may, by its sentence, inflict capital punishment, or perpetual banishment; or forfeiture of goods and lands; or fine and ransom; or imprisonment; as well as removal from office, and incapacity to hold office, according to the nature and aggravation of the offence.”

Senators will understand that I am discussing this point now, not exactly in the order of the exceptions, but because I desire to reply to the assertion of the Managers that the Governor was not in office at the time the alleged misdemeanors were charged to have been committed. It should be remembered that the language of our constitution on the question of impeachment, is identical with that of the constitution of the United States; and it is plain that no private citizen can be held to answer in impeachment. I read again from Story:

The fourth section of the second article is as follows : "The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment, for and conviction of treason, bribery, or other high crimes and misdemeanors."

From this clause it appears that the remedy by impeachment is strictly confined to civil officers of the U. S., including the President and Vice-President. In this respect it differs materially from the law and practice of Great Britain. In that kingdom, all the king's subjects, whether Peers or Commons, are impeachable in Parliament; though it is asserted that Commons cannot now be impeached for capital offenses, but for misdemeanors only. Such kind of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust, are the most proper, and have been the most usual grounds for this kind of prosecution in parliament. There seems a peculiar propriety, in a republican government at least, in confining the impeaching power to persons holding office. In such a government all persons are equal, and ought to have the same security of a trial by jury for all crimes and offenses laid to their charge when not holding any official character. To subject them to impeachment would not only be extremely oppressive and expensive, but would endanger their lives and liberties, by exposing them against their wills to prosecution for their conduct in exercising their political rights and privileges. Now a moment further on this point before I proceed directly to a consideration of the questions at issue. It is unnecessary for me to consume your time by denying or arguing the assumptions of the Managers in this trial. It has been generally asserted, perhaps not in this

Senate, but by other parties, that a man may be impeached for offenses or misdemeanors in office committed years previous. This is a mistaken premise. The constitution of Nebraska on this subject reads as follows :

SEC. 29. The Governor, Secretary of State, Auditor, Treasurer, and Judges of the Supreme and District Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under this State; but the party convicted or acquitted, shall, nevertheless, be liable to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office in such manner as the Legislature may provide.

Not any other officer or private citizen. It has also been said that this Senate has the power to pronounce sentence of removal from office and disqualification, or either, if it see proper. Such a proposition, I pronounce untenable. There are three forms of sentence only, which the Senate can order. First, a removal from office; second, removal and disqualification; and third, a judgment of acquittal. There can be no fourth form. Any other would be to assume that the Senate had a jurisdiction. That, I maintain, belongs exclusively to the people. If the Senate rendered such a decision, it would have the effect of holding a respondent to answer in after years before another and a different court. I challenge the Managers to show where, in any case in the United States, a judgment of disqualification has been separate and distinct from a removal from office. We have examined, I believe, nearly all of the cases which have been tried by the Senate of the United States since the organization of the



Government. The first case, I believe, is the one referred to by the honorable Managers and was that of Senator Blount, in 1790. After the House had preferred the articles of impeachment, and before the trial, Mr. Blount was expelled by the Senate, and on the trial this question came up which we raise here, that he was not an officer of the United States at the time. The next case was that of Pickering, in 1804, charged with drunkenness. He was found guilty, but pleaded insanity. Congress considered, under the plea, that he was not fit for office and was therefore dismissed from office, but not disqualified. Then we have in 1805 the case of Samuel Chase, one of the associate justices of the Supreme Court of the United States. It was the first case that was considered fully in our history. Now I wish to read from that case. First I will read a paragraph from one of the counsel for Mr. Chase, in order to show the application. Martin in this case says:

"In the first article, section third, of the constitution, it is declared that judgment in all cases of impeachment, shall not extend further than removal from office, and disqualification to hold any office of honor or trust, or profit, under the United States. This clearly evinces, that no persons but those who hold office are liable to impeachment. They are to lose their office; and, having misbehaved themselves in such a manner as to lose their offices, are, with propriety, to be rendered ineligible thereafter."

Now we will turn and read what one of the ablest Managers on the part of the House, said in reply to what was said by Mr. Martin; and to show that we must entirely discard these English precedents. He says:

"Those conversant with the judicial history of England, or who have studied her political annals must be sensible of the deplorable situation to which that country has been reduced, at dif-

ferent periods, by the abuse of the power of impeachment. The revengeful exercise of this authority has too often deluged the scaffold with blood. In that country the proceeding by impeachment for any offense supersedes all other modes. The person accused, whether he be acquitted or condemned, cannot afterwards be indicted for the same offence, or called to an account before the ordinary tribunals. The former course is a complete bar to the latter. To prevent those consequences flowing from a proceeding by impeachment under the constitution, those who framed that instrument, at the same time that they limited the punishment, have expressly declared it shall have no effect to bar a trial before the ordinary courts, but that the party shall be liable to indictment and punishment according to law."

Without this positive provision, as we are almost as much in the habit of drawing on England for law as our merchants are on her bank for cash or credit, we might have incorporated a principle into our code totally repugnant to the system. The Constitution has drawn the true line on this subject. From a mere reprimand or temporary suspension, the court may ascend the scale of punishment to removal and disqualification. But thus far can they go, and no farther. They cannot pass the Rubicon. If the crime deserves a more exemplary sentence, recourse must be had to the ordinary mode of proceeding, and then their judgment is not pleadable in bar to an indictment. By this means adequate punishment may in all cases be inflicted. I wish to dwell somewhat at length on this matter, for the reason that this impeachment trial is not for punishment, but that the person is still liable to indictment and punishment. Then this Manager goes on and says:

"In England every person, in a public or private capacity, either as an officer or an individual, is liable to be proceeded against by impeachment. In

this country the sphere of impeachment is properly limited. The Attorney General of Maryland has taken a long, tedious and circuitous march to arrive at this point, which I would readily have yielded without an argument. I do not recollect that any of my colleagues contended for the position that every man in this country, in his individual capacity, might be an object of impeachment. For myself I utterly disclaim the idea. Admitting as I do, in its fullest extent, this wide distinction between the power delegated by the Constitution and that exercised in England, which embraces every subject of that Kingdom, how does it bear on the case to affect the argument? After laboring for a considerable time, and employing all his talents, and that fund of legal knowledge which is inexhaustible, to prove that the House of Representatives cannot impeach every citizen indiscriminately, the learned Attorney General has not favored us with any application of his principle to the present cause. It proves certainly one among many other broad lines of difference which exists between the British doctrines on the subject of impeachment, and the Constitutional provisions of this country. In this respect it adds to the weight of our scale. It shows how cautious we should be in bowing down to British precedents which cannot be perfectly applicable."

Now, I will call attention a moment to another authority. Mr. Thaddeus Stevens ought to be good authority with these honorable Managers on the subject of impeachment. I believe he died with the word "impeachment" upon his lips. So it seems to me they cannot object to him as authority. I read from the second volume of the "Impeachment of Andrew Johnson":

"The offices of impeachment in England and America are very different from each other in the uses made of them for the punishment of offenses; and he will greatly err who undertakes to make out an analogy between them, either in the mode of trial or the final result. In England, the highest crimes may be tried before the high court of impeachment, and the sever-

est punishments, even to imprisonment, fine and death, may be inflicted."

When our Constitution was framed all these personal punishments were excluded from the judgment, and the defendant was to be dealt with just so far as the public safety required, and no farther. Hence it was made to apply simply to political offenses, to persons holding political positions, either by appointment or election by the people. Now, I will take the liberty of referring to one of the members of the Court, and one of the Senators who pronounced judgment in that celebrated case; and I will not refer to Mr. Trumbull or Mr. Hendricks; but I will take Charles Sumner, one of the greatest names, perhaps, in America; one of the most favorable to impeachment, and about as anxious on this subject as Mr. Stevens. I will read from the third volume, page 249:

"As we discern the true character of impeachment under our constitution, we shall be constrained to confess that it is a political proceeding before a political body, with political purposes; that it is founded on political offenses proper for the consideration of a political body, and subject to a political judgment only. Even in cases of treason and bribery, the judgment is political, and nothing more. If I were to sum up in one word the object of impeachment under our constitution, meaning that which it has especially in view, and to which it is practically limited, I should say; Expulsion from Office."

You cannot put a man out of office unless he is in. I know they say David Butler is in office now, but that is a point I will reach soon. I wish at the first to place it beyond a possible question that a private citizen is not subject to the jurisdiction of this Senate sitting as a court of impeachment for offenses he may have sometime committed, while occupying some

office, perhaps that of Justice of the Peace, or that of State Treasurer, or as one of the Judges of the Supreme Court, or as Secretary of State. Suppose that the Secretary of State, or one of our Judges, be, ten years from now, elevated to the office of Governor. Suppose the House of Representatives, not being pleased with the Governor, should conclude to impeach him. What for? Not for offenses committed in the term of office he is holding, but while he was Secretary ten or fifteen years previous. In a case of that kind nobody would doubt that this court had not jurisdiction. Suppose that he had been Governor instead of Secretary of State, ten years ago, can you now ask this court of impeachment to try him for offenses committed during that term ten years ago, with an interval of perhaps five or six years, and not in any other office? I think not. I wish now to come more directly to the consideration of a question you are anxious to hear me upon, believing, as I do, that I have established beyond a possibility of doubt the proposition that officers and nobody else are subject to impeachment. The question now is, is this respondent in office in view of the Constitution as to offenses committed prior to the commencement of his present term? This is precisely the question; and if I have succeeded in removing this English theory of impeachment and convincing you that a private individual is not liable to impeachment for acts committed in any other office, I believe my future task will be comparatively easy. Pardon me a moment, Senators, if I indulge in considering a few plain propositions which, of course, we all understand very well. But I wish to remind you that in American governments there are three co-

ordinate departments, each having delegated to it specific, limited and defined powers, and I wish to bring your minds particularly to the consideration of that subject. Here is the Executive having his duties clearly and fully defined, and so with the Legislative and Judicial departments, and above and over all is the great constituent assembly of the people. They reserve to themselves some powers and rights. Among the rights reserved to the people, the most sacred one is that of choosing their own rulers. The Constitution provides that a Governor shall be elected for two years; it provides that all powers not herein delegated are reserved to the people, following the language of the Federal Constitution in this regard. But it is not material to consider that question. Now the Legislature has its specific functions and powers. The Executive has the same. The Judicial also has its peculiar sphere. Have the people by this constitution delegated that power and right to the Legislature—the right to enquire into the acts of the respondent prior to the commencement of his present term? Last October the people, as they had a right to, assembled in their respective precincts to vote for their State officers, among whom was the Governor. At the same time they voted for a Secretary of State and Treasurer. At the same time, by the same method, the Legislature was chosen—members of the House of Representatives and members of the Senate—all chosen on the second Tuesday of October. Now, was it not within the exclusive jurisdiction of the people to make these selections? and is there any appeal from that? No. I insist the people have a right to choose whom they please to represent them, and

whether they choose wisely or not does not affect this question. Of late years we do not always choose wisely in officers to manage our affairs. But that does not affect the position for which I am contending—that the people have the right to control this matter, and have not delegated to any one the right to set aside their action. Now, I come to another question. On the second Monday of January, 1871, our Governor is sworn in and takes upon himself the duties of the office. The people have sent him to do their work for the next two years, and they have no power, in their original capacity, to get him out of office for two years. What do they say? Now, Mr. Legislators, you watch this man, and see that he performs his duties." The people have passed upon his acts. "But," says some, "he has done acts of which the people know nothing." But that does not affect the matter. The people took this man as he stood at that time, morally and politically, and you have no right to go behind that action. But when you come here, they have delegated power to you to act for them. To try him for offenses committed, is where your jurisdiction commences. Why should you be elected Legislators at the same time he is elected Governor, for the purpose of impeaching the said Governor? Why could not all the expense of this trial have been saved in the first instance by the election of Mr. James or somebody else? Now, it is for offenses committed in this term of office that the Governor might be impeached. You are not to inquire whether the people have acted wisely or unwisely. "But," it will be said in reply to all this, "if your theory is correct you cannot impeach the Governor." Now this simply argues that our Constitution should

be changed, or that our Legislature should be convened at some other time than that when the Governor is to be inaugurated. This theory of impeachment is that punishment or disqualification should be made to reach persons who were to hold office for long periods of time. In the United States cases alluded to, the incumbents were appointed to hold for life. Therefore, the reasons for their removal were potent. If I am correct in this position, that the people have the whole right to elect their officers, then this respondent should not be held to answer for offenses alleged to have been committed under and during a former term of office. And believing that I am correct, it only remains to affirm that all of the eleven articles of impeachment except the sixth, fall to the ground. Why, then, put the State to the expense and inconvenience of examining two or three hundred witnesses, for the accomplishment of no good purpose? The sixth article, it will be seen, charges the respondent with having committed a misdemeanor in office during his present term. I very much question whether, under our Constitution, the Legislature has any authority for conferring such powers or duties upon the Governor. The Secretary, Auditor and Treasurer, are required, in addition to their regular duties, to perform such other duties as shall from time to time be prescribed by law. But the Executive is not anywhere included in such direction. Nor are the duties of a Commissioner for the sale of town lots, in any way connected with or belonging to the office of Governor.

Manager PORTER. Mr. President, and Gentlemen of the Senate—It was not my intention to argue this question, but in order to secure a fair divi-

sion of the time. I will make a few remarks upon the position taken by the counsel for the respondent who has just addressed you. I don't think his position agrees with the position taken by his colleague at another time. Now I claim, Mr. President, that this tribunal is a peculiar one; that it has different powers than those granted to other tribunals, and I think we are to take the precedents on trials of impeachment to govern us on this trial. And we do contend that the English authorities, when the person to be impeached is not in office, are not to be considered. It is true, in the case of Warren Hastings, that he had resigned his position, and his impeachment was had one year after his resignation. But, Mr. President, if we look into the reports of impeachment courts in our own States, we find there the Hubbell case, where he was tried after his term of office had expired—I read from the trial of Hubbell, page 70:

“Whether this court has the constitutional jurisdiction to act upon charges of impeachment, preferred by the Assembly, and if it has such general jurisdiction, whether that jurisdiction must be confined to charges of offenses committed, or alleged to have been committed by the respondent in, or during, the exercise of the office which he now holds, or whether it can consider charges for offenses, or crimes committed, or alleged to have been committed during the existence of a term of office, either as a Judge of the Circuit or Supreme Court, after such term expired.”

We insist, Mr. President, that this is a case in hand where the person was brought before the court of impeachment and where the rules of England were acted upon. And on this very point that court adopted the following resolutions:

“Resolved, That this Court has the constitutional jurisdiction to try an impeachment preferred by the Hon.

“The Assembly of the State of Wisconsin.”

*Resolved*, That this Court on the trial of the impeachment now pending, have jurisdiction to inquire into offenses charged to have been committed as well during the former term of office of Levi Hubbell, Judge of the 2d Judicial Circuit of this State, as into offenses charged to have been committed during the present term of his said office.”

Now, I apprehend, Mr. President, that until the gentlemen can bring into this Court some one case where this question has been squarely decided different from this case, they should be stopped from raising that question here; and with these remarks I shall dismiss that exception. In reference to another exception raised in their answer, that the Governor should not be impeached for any acts done by him in any other capacity than that of Governor, it appears to me that this is a discrimination altogether too nice to be considered by this Court. I understand that a trial of impeachment is a punishment, notwithstanding the argument of the counsel on the other side. That the people through their Representatives may impeach and remove from office; and, also, may follow it up by disqualifying him from holding office hereafter. I submit, further, that the respondent in this case was made by virtue of his office as Governor, an *ex-officio* member of the Board of Commissioners of public buildings; that this office became attached to and part of his duties as a Governor, and ceased whenever he ceased to be a Governor. The exercise of his powers as Land Commissioner was the same as that of vetoing a bill. Before I leave this point, I will read from page 131, vol. 1, of the impeachment of Andrew Johnson, first note:

"On the trial of Chase, Mr. Nicholson said: You, Mr. President, as Vice President of the United States, together with the Secretary of the Treasury, the Chief Justice and the Attorney General, as commissioners of the sinking fund have annually at your disposal \$8,000,000 for the purpose of paying the national debt. If, instead of applying it to this public use, you should divert it to another channel, or convert it to your own private uses, I ask if there is a man in the world who would hesitate to say that you ought to be impeached for this misconduct? And yet, there is no court in this country in which you could be indicted for it. Nay, sir, it would amount to nothing more than a breach of trust, and would not be indictable under the favorite common law. If a judge should order a case to be tried with eleven jurors only, surely he might be impeached for it; and yet I believe there is no court in which he could be indicted."

There are many other authorities and cases cited, referring to the same point, and it shows that as a Commissioner he was acting as such Commissioner by reason of his being Governor of this State. In reference to another point raised by the gentleman in his argument, that the object of impeachment was to expel from office, to remove a person who, by reason of his conduct in office, had rendered himself unfit to hold the office. In this view I agree with the gentleman, but still believe that such disqualification must result in punishment. Now, it is not a fact that we have organized here a court of impeachment? Is it not equally a fact that we have arraigned before us as the respondent, Governor Butler, in this State, who, at this time, is in office as Governor of the State? And cannot all of the penalties provided by the constitution, in cases of conviction of impeachment, be pronounced against him? In other words, are you not, as a Court of impeachment in this case, able to remove

from, and disqualify from holding, office in the future? If you so determine, I cannot understand why they should insist upon these technicalities, these finely drawn distinctions, in order to throw this case practically out of Court. It looks like weakness, and as though they were afraid the verdict would be against them. I have simply made these remarks in order that the counsel for the people may have an opportunity to have the argument of the counsel for the respondent before him, before he closes the argument in behalf of the Managers.

Manager DOOM. I merely wish, at the request of Senators, to call attention to a question that might be raised, of a resolution having been passed by the called session, which, in the opinion of the counsel for the respondent, exonerates and acquits his Excellency, the Governor, of all misdemeanors he may have committed previous to that time. Now, Mr. President and Senators, I would ask your attention to the peculiar provisions of our Constitution, and I would ask Senators to take this idea into consideration. You are aware of the peculiar construction of our government. According to the Constitution, our Governor is inaugurated on the first Monday of January. The regular session of the Legislature meets at that time. The Legislature holds forty days. At the expiration of that time the regular session expires. The Legislature cannot meet again, except at the call of the Governor. That being the case, the Legislature comes in at the beginning of this term. We will suppose that the Legislature enacted laws for the protection of the people and the interests of the State. At the expiration of forty days, they go home. The Governor remains. He then is left perfectly at liberty to act as he pleases, and can

violate any law he thinks proper, and where is your remedy and where is is your redress? I do not wish to prejudice your minds. At the session of January 1869, the Legislature enacted a law for the sale of unsold lots, and to provide for the erection of an Asylum and a University. That law provided in express terms that the Commissioners should not expend over fifty thousand dollars. The Legislature had scarcely got home until the Governor exceeds the authority given, thus violating the Constitution, and enters into a contract for \$88,000 over and above what the Legislature had ordered. Now you are told you can have no remedy. It is not a question as to the innocence or guilt of David Butler. But a question of whether you will establish this precedent, that you can never hold him accountable after the expiration of the particular term of office. Again, it is alleged, and will be claimed, that the called session of 1870, enacted a resolution that exonerated the Governor, and acquitted him of all crimes, and relieved him of all responsibility. Now, what is the history of that session of February, 1870? and I would ask you, Senators, to take the works I cite you, and examine them. The proclamation of the Governor says:

WHEREAS, The constitution of the State of Nebraska provides that "the Legislature may, on extraordinary occasions, be convened by proclamation of the Governor, and when convened shall transact no business except such as relates to the object for which it was so convened. to be stated in the proclamation of the Governor."

Suppose this Senate acquit David Butler, the Governor would have two years to run. He will tell you, when he calls you together, "You shall not legislate or investigate anything except what I tell you in this proclama-

tion." This is the power invested in him. It was under that proclamation that that extra session was convened. What do you find again? There was a proposition to investigate. It was rumored over the country that there were irregularities and crimes being committed by the Commissioners. The proposition was mooted in the House of Representatives to investigate their conduct. And what do you find? You will find even the Attorney General was called in to tell that Legislature that they could not legislate upon that subject; that they had no power to examine into the conduct of those officers. I care not what crimes they may have committed; but, gentlemen, your hands are tied. But was that all? Far from it. There are members in this House who will remember the scene in the House of Representatives, when he declared he would "prorogue the damned machine if they attempted to examine into his conduct." It was a disgraceful scene. He charged members of the House with crimes simply because they desired to investigate him. Those men stood high, and deservedly so, in the estimation of the people. But the House was not to be deterred. The Senate took it up, and passed a joint resolution on the 24th day of February, at the called session of the Legislature, which will be found on page 48 of the Senate Journal, as follows:

"Also S R 6, joint resolution providing for the appointment of a committee to investigate the official acts of the State Commissioners of Public Buildings, and recommend that the resolution pass; upon motion of Mr. Cunningham the report of the committee of the Whole House was adopted."

Now that was done on the 24th of February. Turn to page 51 of the same Journal, and you will find that

on February 23th the Governor sent in his message:

"When the matter of the investigation of the action of the Board of Commissioners of Public Buildings, etc., was first mooted, believing as I yet believe that the best and material interests of the State would not be promoted thereby, such investigation met with my earnest opposition. I felt that the call was a blow aimed at me, not only in my official character, but as a man and a citizen, emanating from a personal opponent, based upon floating and uncertain rumor—its inception based upon a desire to insult and debase me by giving prominence and substantiability to the veriest gossip. It is not a matter of surprise that smarting under the base attack, I should repel it. I felt that the mere call was therefore insulting in the extreme, and I rejoiced when the House of Representatives placed its condemnation upon it."

I wish to call the attention of the Senators to the circumstances under which this resolution was passed. I desire to call your attention to page 49 of the House Journal:

"Mr. PARMELEE rose to a question of privilege and submitted the following:

Inasmuch as the Governor of Nebraska has, while a guest of this House, seen fit to assail my personal character, and my character as Representative, I demand that a thorough investigation be gone into, and ask some member to be kind enough to move the appointment of a committee for that purpose, and that said committee report at the present session of the Legislature."

Now, I wish to call your attention to the reports of that committee.

"First, That the Commissioners have sold the saline lands of the State without due regard for the law; that they exceeded their authority under the law by selling saline lands without first selling all the Lincoln lots, and by selling more of the lands and lots than was required to obtain the amount of the appropriation made by law. From the testimony, we find that said commissioners advertised extensively

through the country, that on certain days they would sell lots and lands at Lincoln, and on other days a good many people coming to Lincoln to buy lots and lands, and to accommodate those who came for the purpose of buying lands only, the Commissioners sold some of the land.

"The Commissioners have been somewhat careless, and have paid estimates on the erection of the asylum, when sufficient work and material were not furnished for the asylum to justify the estimate at the time made.

"The contractor of the asylum has also contracts for building, in which the Governor and Secretary of State are interested, and such contractor has obtained funds on estimates for the asylum, with the view of using the funds immediately in the furtherance of the erection of the houses of the Governor and Secretary, and in like manner has also obtained funds from said parties on estimates for their houses, which applied to the work and material of the asylum. The testimony also shows that there has been about \$4,000 drawn in excess of the work done, and material furnished on the contract for the erection of the asylum; but, in the opinion of Mr. Hunt, one of your committee, who is an experienced builder and contractor, who examined said work done, and material furnished, the state can suffer in no material interest so far as the contract for building the Insane Asylum is concerned."

This report puts the matter in very fine language; it reads very smoothly, but it is one of the very best evidences we have, gentlemen. And now, Senators, if you decide the point raised, by saying that, having passed twelve o'clock of the night upon which his term of office expires, the Governor is not amenable for offenses committed during that term of office, you have inflicted a terrible wrong upon this people. Gentlemen, I am no speaker, and am not prepared to speak if I were, but this is the question you are called upon to decide, and I do ask of you,



Senators, as my fellow-citizens of the State of Nebraska, not to decide that we cannot hold this man responsible for acts committed before his last term of office expired. But we claim that David Butler is yet in office. Now I would also call attention of Senators to the language of Section 2 of the Executive Article of the Constitution:

"The Governor, Secretary of State, and Treasurer, shall hold their office for two years; and the Auditor for four years. Their terms of office shall commence on the second Monday of January next after their election, and continue until their successors are elected and qualified."

Also to Section 25 of same Article:

"Members of the Legislature, and all officers executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter upon the respective duties of their offices, take and subscribe an oath or affirmation to support the Constitution of the United States, and the Constitution of the State of Nebraska, and faithfully discharge the duties of their respective offices to the best of their ability."

Again, you will find the following in public laws for the June session of 1867, on page 56:

SEC. 1. All State officers elected at the June election in the year 1866, who have not already taken and subscribed to, and filed in the office of the Secretary of State the oath of office prescribed in and by the 25th Section of Article 2, entitled "Legislative," of the Constitution of the State of Nebraska, are hereby required to take, subscribe to, and file the said official oath in the office of the said Secretary of State within one day after the passage of this act. And in the event of any person or persons so elected to any office at the time aforesaid, failing to qualify and to file the oath as hereinbefore provided, and to enter upon the discharge of the official duties pertaining to the office, the office to which the defaulting person was elected at said election shall be deemed vacant.

SEC. 2. The Governor, Secretary of State, Auditor and Treasurer, and

such other State officers as may be provided for by the law, elected at the general election for State officers in the year 1868, and at any subsequent general election for State officers thereafter, shall qualify, as directed by the first section of this act, within thirty days after the time prescribed by the Constitution, at which said officers shall enter upon the discharge of the duties of the office to which they were severally elected. In the event that any of the officers shall fail to qualify, in the time prescribed, the office shall be deemed vacant.

These sections and authorities cited make a case against David Butler. He is guilty of impeachable offenses; he has acted without warrant of the Constitution, and you, Senators, by your oaths, are called upon to do justice to the demands of the people whom you represent.

MR. MARQUETTE. I shall ask the attention of the Senators while I reply briefly to the argument just heard on the part of the Managers, as well as to maintain some propositions of law which we think will determine as to whether the respondent in this case is guilty or not. We maintain that the Governor cannot be impeached as Governor for acts done as land commissioner:—

1st. That the Senate sitting as a court of impeachment sits in a judicial capacity and can exercise no authority except such as is clearly granted it by the Constitution of this State.

2d. That the words "misdemeanor in office" mean a misdemeanor committed while performing some of the duties that the Constitution requires of him, either by express words or by necessary implication as Governor—acts properly done in his official capacity.

3d. That the extraordinary power of impeachment should only be resorted to to get a person out of office when there is no other remedy.

I refer you to Coolie's Constitutional Limitations, page 115, Sec. 2. You are not sitting here as a legislative body, but as a judicial body. In this authority he says:

"In deciding this question (as to the authority of the Governor) recurrence must be had to the constitution. That furnishes the only rule by which the Court can be governed. That is the charter of the Governor's authority. All the powers delegated to him by or in accordance with that instrument, he is entitled to exercise, and no others. The constitution is a limitation upon the powers of the legislative department of the government, but it is to be regarded as a grant of powers to the other departments. Neither the executive nor the judiciary, therefore, can exercise any authority or power except such as is clearly granted by the constitution."

That is to the judiciary department and to the executive. The power you have to impeach is granted to you by the constitution. Now, then, let us see what is granted by our constitution:

"Art. 2, Sec. 29. The Governor, Secretary of State, Auditor, Treasurer, and Judges of the Supreme and District Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit, under this State; but the party convicted or acquitted shall, nevertheless, be liable to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office in such manner as the Legislature may provide."

Now I simply say this, that the power of impeachment extends no further than to those officers which the Constitution enumerates. Now right here I will answer an authority referred to by a Manager and quoted by a Manager in the Chase case, which by the way is not good authority, but

if it is good under the Constitution of the United States it may not be under ours, for our Constitution is different. The Constitution of the United States does not limit impeachment to misdemeanors in office as ours does. I will read from the brief made up by the managers in Johnson's trial, what is called the Lawrence brief. He refers to the Constitution of Massachusetts, and says:

"By the Constitution of the State of Massachusetts the Senate is to hear and determine all impeachments made by the House of Representatives against any officer or officers of the commonwealth for misconduct and mal-administration in office."

"On the trial of Judge Prescott, in 1821, Mr. Blake in defense, referring to the words *misconduct* and *mal-administration* said: 'What then are the legal import and signification of these terms?' We answer, precisely the same as of *crimes* and *misdemeanors*; that they are in every respect equivalent to the more familiar terms that are employed by the Constitution of Great Britain in its description of impeachable offences, subject only to the whole-some limitation which in this commonwealth confines this extraordinary method of trial to the official misdemeanors of public functionaries. (Prescott's trial 117, 118).

The words of the two constitutions are precisely alike; they both confine it to the official acts of the party. It must be an act in reference to some of his duties conferred upon him by the constitution. The framers of the constitution could not have had in view the appointing of a land commissioner, and hence they could never have had in view the idea that a man could be impeached as a land commissioner. I refer to Sedgwick "on Statutory and Constitutional Law:"

"Laws which restrain natural liberty, as those which prohibit what is not of itself illicit, or which derogate otherwise from common right, laws fixing the punishment of crimes and offenses, or penalties in matters of a civil nature which prescribe formalities that seem severe, those which permit parents to disinherit children, and others of a similar character, ought to be so interpreted as not to extend their provisions to cases which they do not embrace; and, on the contrary, they should receive all practical mitigation of equity and humanity. Sec. 15, p. 235.

"Let the weak have the benefit of a doubt, without defeating the general object of a law. Let mercy prevail, if there is a real doubt. Sec. 14, p. 287.

"The weak (hence the individual arraigned by the State) ought to have the benefit of doubt; doubt ought to be construed in mercy, not in severity. A law may be rendered milder, but not more severe. Sec. 18, p. 289.

"And the general rule has been frequently declared in this country. So in New York, it has been said that penal statutes, in declaring what acts shall constitute an offense, and in prescribing the punishment to be inflicted, are certainly to be construed rigorously. So, in Massachusetts also, penal statutes must be construed strictly according to the intention of the Legislature as discovered by the import of the words, and when not remedial are not to be extended by equitable principles." pp. 325 and 326.

In other words, the Constitution of this State says: A Governor may be impeached for official acts or for misdemeanor in office. All the power you have is given you by that Constitution. What did they mean? You cannot extend it further than the framers meant. Did they mean for some act as Land Commissioner, or some duty hereafter imposed, that he could be impeached? They would be extending it beyond the meaning of those who framed it, which is never allowed where rights of any kind are

to be taken. The statute is to be considered strictly where rights are given, liberally." The weak (hence the individual arraigned by the State), ought to have the benefit of doubt; doubt ought to be construed in mercy; not in severity; a law may be rendered milder, but not more severe." Where a man is arraigned, as this man is arraigned, you have a right to say it shall be. And it says in all cases of this kind you have a right to unfold the white flag of Mercy. The constitution says he may be impeached as Governor for acts as Governor. What acts? Acts imposed upon him by the Constitution. That is the misdemeanor in office. Whatever act he does as Governor he can be impeached for. Here is an act that says "the Governor, Auditor and Secretary of the State are hereby appointed Commissioners." There is no one in this Senate who will say the staking off of a town is an official act, and that anything committed would be a misdemeanor in office or offense as far as the Governor is concerned. It is not made so by the Constitution; cannot be made so by the law, and it is not so made by the law. It is true, to get around this difficulty, they did make the Governor a Commissioner. He gets scarce any pay; not by no means what he ought to get; and in order that he might get more they make him Land Commissioner as well as Governor. But when he acts here as Commissioner, he acts as Commissioner and not Governor. The offices are distinct unless this Legislature, in enacting this law, violated the constitution. Why? Because that constitution limits the salary to \$1,000. But the appointing him Land Commissioner gives him another salary. And they cannot do a thing indirectly which they cannot

do directly. Now, the difference between those officers is so marked that they cannot be considered as one; one is elected by the people, the other is appointed by the Legislature; one has its origin in the constitution, the other by legislative acts; one by the law is forced to give bonds, the other is not; one is for a limited term, the other is not. The Legislature can give the office of Land Commissioner to any one, and that person would have the same bond to give; would have the same oath to take; would have the same duties to perform; would be liable just the same as the Governor. As to the third party, he would be liable only under the provision of the constitution, which says "all other civil officers shall be tried for misdemeanor in office in such manner as the Legislature may provide."

**Mr. ESTABROOK.** If the Legislature enacts a law under that last clause, to impeach the Commissioner, and he is impeached, who would be removed?

**Mr. MARQUETTE.** I don't think the Legislature can make a law to impeach him, but if they did, under that clause, they could impeach only the Land Commissioner, and not the Governor.

**Mr. ESTABROOK.** Suppose you try him—the Commissioner—and impeach him, who do you remove?

**Mr. MARQUETTE.** Why, you remove the Commissioner and not the Governor. Under that clause in the constitution, you cannot touch the Governor, or touch him in his office. The Legislature has the right to cut off the head of David Butler as Commissioner, in one moment, but they could not touch him under this law otherwise than by impeachment. The powers are distinct. Now then, if the office of commissioner was in the

hands of another party to-day, you could not impeach him. There would be no power that could impeach him. You would have to go under the other clause of the constitution, and punish him as the Legislature would say. Because, in another part of this constitution it says, "except in cases of impeachment, the party shall always be entitled to a trial by jury," and hence, if you make any other law to punish a Commissioner, it must be by a trial by jury. The law would be unconstitutional if it did not. Any other law, then, than that which would give him a trial by jury, would be unconstitutional and void. In this question as to who shall be impeached, it simply tells you who shall *not* be impeached. It simply says that other officers shall not be tried any other way except by jury. Now what fix does that leave you in? Why simply that David Butler has not the same right that other men have. Because David Butler has been honored by the people, you mean to deprive him of the privilege you allow other men; that is, the right to be tried by a jury of his peers. You have here an illustration of that well known principle, that you can do indirectly what you cannot do directly. I cannot see why, when we made our Constitution, we put the salary of the Governor at so low a sum that he could not live on it. Then to give him enough to live upon, we eke out his salary by making him Land Commissioner, and then take from him rights we would give any other man as land commissioner. Now, for instance, it is frequent, where offices are joined together, for one person to hold both offices. In our county the same person holds the office of Register of Deeds and Clerk of the District Court. The duties and responsibilities of the

two offices are the same as though they were not joined. When the clerk acts as Clerk of the District Court, his acts are the same as any other. When he acts as Register of Deeds, his acts are the same as those of any other person filling that position—his duties are precisely the same, no more, no less. So here you cannot escape it. When David Butler acts as land commissioner, his acts are the same as any other man in that position. He has given precisely the same bonds, and where another man cannot be impeached for certain acts here, he ought not to be. The great object of impeachment is to get a man out of office, when it cannot be accomplished in any other way; but my friend, one of the Managers, has stated that the great object is to *punish* a man. A certain great writer has said "the time will soon come when laws will be passed simply for protection—not for punishment." I am not here to endorse that proposition in full, but I am here to prevent a man being punished twice for the same crime. I read from page 124 of Johnson's trial:

"It is absurd to say that impeachment is here a mode of procedure for the *punishment of crime*, when the constitution declares its object to be *removal from and disqualification to hold office*, and that 'the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law,' for his '*crimes*.' "

I will read again from the same brief, a quotation from Curtis' history of the constitution. He says:

"Although an impeachment may involve an inquiry, whether a crime against any positive law has been committed, *yet it is not necessarily a trial for crime*, nor is there any necessity, in the case of crimes committed by public officers, for the institution of any special proceeding for the infliction of the punishment prescribed by the

laws, since they, like all other persons, are amenable to the ordinary jurisdiction of the courts of justice, in respect of offenses against positive law. *The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office.*"

Its object is for the *removal* from office. The idea is an erroneous one, where there is some shorter way to get a man out of office, to go to the uncertain one of impeachment. I have already shown, that where you can confer the office of land commissioner, you can also take it away. Why? I ask. Because there is a better and a speedier remedy. If, as Commissioner, the respondent has committed an impeachable offense, the law can be brought into use and justice meted out. As my learned friend repeated in his argument, impeachment was an invention at a time when officers were created by the crown to hold for life, and it was the only way derelict officials could be reached. Rawle, on the constitution, lays down the same proposition. Whatever the respondent has done as land commissioner is, I affirm, entirely separate and distinct from what he has done as Governor, and if the charges are good and true, he can be reached in a moment. The argument of counsel on the other side partakes more of the nature of a demand for punishment than of one for justice or mercy. The eloquent Sumner and Thad. Stevens, in the Andrew Johnson trial, did not demand but rather denied the principle of impeachment as reaching to punishment or confiscation of property. It is, Senators, no part of the history of America that impeachment and conviction should be followed by severe punishment, disqualifications, and confiscations of property. It is needless to

argue that the offices of Governor and Land Commissioner are separate and distinct offices. Nor is there any constitutional or legislative prohibition to his holding both offices. Why, when I first came to Nebraska in the county in which I now reside, one man by the name of Joe Brown (well known to Gen. Estabrook) held all the county offices. I will not say how well he filled them, but he drew the pay and emoluments. And yet when we present and argue this point from numberless precedents, that the respondent is not to be held before this court for acts committed as Commissioner, we are charged by gentlemen of the other side of being sticklers for technicalities. If it be constitutional, as we maintain, we can bear whatever of odium attaches to such technicality. I am here to defend the constitution though it be decried as a technicality. Nor is this the first time in the history of this country where the constitution has been held up as a shield to protect the innocent. When secession raised its hydra head in the Senate of the United States, the great Daniel Webster held up the constitution as a shield to the rights of all.

I think, Mr. President, that I have successfully established the propositions that we set out to prove. One other word in reply to the Manager (DOOM) who has just spoken. I was present in the House of Representatives when the Governor sent in his message. There may have been language in that message which I would not have used, but I am confident that at the time the Governor used no profane language in reference to the conduct of the House. It was said that the report submitted by a committee of the House was a "whitewashing" report. If it was, the people, by their votes last fall, endorsed it. "We may

perceive," says Rawle p. 208, "in this scheme a useful mode of removing from office him who is unworthy to fill it in cases where the people, and sometimes the President himself, would be unable to accomplish the object." Now if that law is worth anything it is worth this, that where the people can accomplish it, impeachment is not to be resorted to. If it is a fact that this Legislature can go back and reverse the judgment of the people, why then the sooner we know it the better. In the Constitutional Convention when the subject of impeachment was before it, Governor Morris said. "He can do no criminal act without coadjutors who may be punished. In case he should be re-elected, that will be a sufficient proof of his innocence." Now, sir, they all seem to acquiesce in that view, that when he was re-elected that was proof of his innocence. And I undertake to say that the authority of those men is the best we can get on the constitution. They were fresh from the revolution. He said, in speaking of impeachment, that the re-election by the people was a decision of the question. It is simply saying, as my friend has pointedly said, that the people are the highest power from which there is no appeal. And when they say Governor Butler shall be their Governor, you cannot go back of that decision. You may think he is not worthy but they say he is worthy. That, gentleman, is the question and in the end there must be some one to decide it.

In this case it has been decided by the people, and when they decide it, from them there is no appeal. I have another authority on this, and it is from the State of Ohio. It appears that every State, I believe some day or other, has had a fever for impeachment. Arkansas went into it last year

urged on by some one ready and desirous to fill the vacant office that would be made if the movement was successful, but she gave it up. I don't say this is the case here, but, sirs, I expect if you knew all the whisperings that have sounded through these corridors and secret chambers where offices are bought and sold, you might gather a little of the animus that has brought on this trial of impeachment. The whole matter I see reported in the *Western Law Monthly*, volume 5 page 3, June 1863.

"The first session of the Supreme Court (of Ohio,) under the constitution was held at Warren, Trumbull County, on the first Tuesday of June 1803. The State was divided into three circuits. The Third circuit of the State was composed of the counties of Washington, Belmont, Jefferson, Columbia and Trumbull. At this session of the legislature Mr. Pease was appointed President Judge of the Third circuit in April 1803, and though nearly twenty-seven years old, he was very youthful in appearance. He held the office until March 4 1810, when he sent his resignation to Governor Huntington. During his term of service upon the bench many interesting questions were presented for decision, and among these the constitutionality of some portion of the act of 1805, defining the duties of justices of the peace; and he decided that so much of the fifth section as gave justices of the peace jurisdiction exceeding \$20, and so much of the twenty-ninth section as prevented plaintiffs from recovering costs in actions commenced by original writs in the Court of Common Pleas, for sums between \$20 and \$50, were repugnant to the constitution of the United States and of the State of Ohio, and therefore null and void."

The clamor and abuse to which this decision gave rise was not in the least mitigated or diminished by the circumstance that it was concurred in by a majority of the judges of the Supreme Court, Messrs. Huntington and Todd.

At the session of the legislature of 1807-8 steps were taken to impeach him and the judges of the Supreme Court who concurred with him; but the resolutions introduced in the *House* were not acted upon during the session. But the scheme was not abandoned. At an early day of the next session, and with almost indecent haste, a committee was appointed to inquire into the conduct of the offending judges, and with leave to exhibit articles of impeachment or report otherwise as the facts might justify. The committee without delay reported articles of impeachment against Messrs. Pease and Todd, but not against Huntington. Now, gentlemen of the Senate, I am going to ask you why they did not report articles of impeachment against Huntington? I will tell you. "But not against Huntington, who in the meantime had been elected Governor of the State." That is to say the people in the mean time had decided the question as to Huntington. The articles of impeachment were preferred by the House of Representatives on the 23d day of December 1808. He was summoned at once to appear before the senate as a High Court of impeachment, and he promptly obeyed the summons. The Manager of the prosecution on the part of the House, was Thomas Morris, afterwards Senator in Congress from Ohio, Joseph Sharp, James Pritchard, Samuel Merriitt, and Othneil Tooker. Several days were consumed, but the trial resulted in the acquittal of the Respondent. In a sketch of Hon. George Todd August number same volume, we learn that at the session of the Legislature of 1808-'9, he was impeached for concurring in decisions made by Judge Pease, in the counties of Trumbull and Jefferson. That certain provisions of the act of the Legislature

passed in 1805, defining the duties of Justices of the Peace, were in conflict with the constitution of the United States and of the State of Ohio, and therefore void. And further:

"These decisions of the Courts of Common Pleas and of the Supreme Court, it was insisted were not only an assault upon the wisdom and dignity, but also upon the supremacy of the Legislature which passed the act in question. This could not be endured; and the popular fury against the Judges rose to a very high pitch, and the Senator from the county of Trumbull, in the Legislature at that time, Calvin Cone, Esq. took no pains to soothe the offended dignity of the members of that body, or their sympathising constituents, but pressed a contrary line of conduct. The Judges must be brought to justice, he insisted vehemently, and be punished, so that others might be terrified by the example, and deterred from committing similar offenses in the future. The charges against Mr. Todd were substantially the same as those against Mr. Pease. Mr. Todd was first tried and acquitted. The Managers of the impeachment, as well as the result, were the same in both cases."

This is the cry here; clamor must be brought to terrify or force a conviction. Todd was first tried and acquitted, and so it will be here; outside clamor can convict no one. I think I can state in that case, the Legislature of Ohio, following the rule laid down by the United States Constitutional Convention, released Huntington from prosecution on the ground that the people, a higher court, had passed upon his case and declared him innocent. And, gentlemen, the state of Ohio speaks to you and says that here, as there, the will of the people shall be the law of the land. *Vox Populi vox Dei*—the voice of the people is the voice of God. I know these Managers claim to speak for the people; they claim there is a clamor for conviction. On the other

hand, I speak for the people, who calmly and silently went to the polls, after full canvas of very nearly all the charges brought against him, and elected him Governor of this State. And ask you to stand by and declare again that the will of the people shall be the law of the land.

Senator TUCKER. Mr. President. I now move that this Court adjourn.

The President put the motion, and the Court adjourned till ten o'clock tomorrow morning.

### Third Day's Proceedings.

THURSDAY, March 16, 1871.

The Senate as a Court of Impeachment met at 10 o'clock, A. M.

The PRESIDENT. Before the counsel for the prosecution proceeds with his argument, I would state that it has been suggested that the official reporters be sworn, and I do not know but that it is right they should be.

Thereupon Messrs. J. W. Howard, John T. Bell, John Hall and Dan. Brown were duly qualified as official reporters pending the trial of the impeachment of David Butler, Governor.

Mr. ESTABROOK. Mr. President and Gentlemen—I believe a portion of you are farmers, and as farmers you become harvesters, and after doing a portion of the harvest you gather in, and after doing a portion of the threshing you garner it. Perhaps it would be well for us to look around and see where we stand. This case has taken a very extraordinary turn. It assumes a more furious position than any impeachment trial ever recorded in the annals of impeachment. There are a number of questions which have been submitted, and all except one, are different from any that were ever exhibited before in a Court of this



character. They have taken the position, however, of one question before this Court, and are to be considered by them and reported upon as one proposition. Now, it seems to me, that all these questions, if they be determined one way or the other, may be said to determine the whole case. Perhaps not. It is not very easy to say exactly to what extent they will go, and where they will stop. It is clear that a portion of them run the entire length of all the articles of impeachment. Now, in order to get a view of the position we occupy, let us take a little historical view of the transaction. You will recollect the very extraordinary remark made by the Honorable Judge Briggs in his speech yesterday, that there was no remedy,—whatever may be the evils and the wrongs that the body politic are now suffering in consequence of the misdemeanors or the malfeasance in office upon the part of the individual who occupies the position of respondent; that there was, according to his theory, positively no remedy for this people, until the years should again roll away, and the matter come before them again at the polls. It must be clear to every individual that this power which has been inserted in the Constitution of our State is clearly one entirely useless, superogatory, and of no effect. If it be true, as the gentleman says, that there is no possible relief—no possible means of escape—by which the people can rid themselves of an individual who, having succeeded in covering up his tracks to the end of one official term, now throws off his guise and declares himself to be the criminal the people have suspected him of being; if this be true, it is a matter for serious contemplation and consideration upon the part of this Senate. But,

gentlemen, let me assure you that it is not the law, as I will endeavor to show you. Let us see as to what particular circumstances these rumors applied, and let me suggest that it is proper to keep the whole field within the range of our view during the entire consideration of this subject. And what is covered by it? It will be recollected that some year and a half ago there were vague whisperings in and around this State that there was something peculiar about the five per cent. fund; and that there was something peculiar about the way the money was being expended in building beautiful mansions at the city of Lincoln. There was something wrong suspected. It was breathed by certain individuals, who had some object in view in misrepresenting, or who were political partizans, and bent upon breaking down the administration the people had put in power. But a convention was called by special proclamation of the Governor; called to consider certain wants and matters that were inserted in accordance with the Constitution. It took upon itself the power and prerogative of considering these vague rumors, that found credence through the length and breadth of Nebraska. It was said, upon the part of the enemies of Gov. Butler, at the special session, that he dared not call such a session for fear of something. But, nevertheless, he called the session, and though it was not legitimate at all, this matter passed under review. and a part of it is made a record of history, and the balance through the newspapers. Such a movement met the determined opposition of the Executive of this State, and he went so far as to use the expression used by an honorable gentleman yesterday, that he would prorogue the institution. using a profane word, which I

will not repeat—using that very kingly term “prorogue.” He became, as it were, an autocrat. But I need not dwell in detail upon it for the purpose of this argument. It is sufficient to say that it underwent some sort of investigation, and no man on the committee dare stand up and say his record was as it should be. No man dare assert he was not violating the first article of the Constitution. I think it was stated by Judge Briggs, yesterday, there were occasions where it is proper to violate laws. That there are times when sworn officers are at liberty to violate laws they have solemnly pledged themselves to enforce and abide by. Well, it is sufficient for me to say that the first endorsement, of the acts of the Governor, was made by the Legislature in their action at the time referred to. It was claimed by Mr. Marquette, yesterday, that there was such endorsement. That there is endorsement, no one denies. Time passed along up to the time of the last election; as this time was also referred to by my friend, the learned counsel, at that time it was claimed by the newspapers, that Governor Butler had taken \$17,000 of the school fund and put in that elegant chateau on the hill yonder, and that he had given no security for it; and it was also stated then that there was no real authority for this,—no law authorizing him even to touch it. The Governor was only authorized to make arrangements with the authorities at Washington to secure this money. It is well known what was the result of this matter finally. David Butler borrowed this money; borrowed it of whom? Of David Butler! David Butler borrowed it of David Butler, and upon what security? It was loaned by David Butler to David Butler upon such security as David But-

ler chose to give. And it is said that the people again endorsed this action. Immediately upon hearing this statement made by the learned counsel yesterday, I retired to my room and read “Chitty on Notes,” in order to see about what liability this court will assume if it chooses to become the third endorser of this transaction. But, gentlemen, I will not indulge in this sort of general review, for we are somewhat limited with regard to time. I simply desire to bring the history of the matter up to the present time. Now a word with regard to the authority for loaning this \$17,000. When the inquiry is made as to where the money is placed, or what has become of the security of this fund, he answers to the Legislators, “I put it into the State Bank;” and he does this in a very lofty manner. A co-ordinate branch of the State government is asked by another branch of the government for certain information, and it is answered by a falsehood. And the Governor goes about throughout the State making this false representation, previous to the election last fall.

Mr. REDICK. I rise to a point of order, Mr. President. I wish the gentleman to stick to the laws and show what he expects to prove, I am not able to answer the law advanced by the gentleman, and a stump speech also, in a speech of forty-six minutes.

The PRESIDENT. The issue before the Court is on the exceptions raised by the respondent, and counsel will confine themselves to the exceptions.

Mr. ESTABROOK. Then I will confine myself to this matter of the “white washed” report which was handed in by the Investigating Committee. But I was going to call the attention of the honorable Senate to the fact that so much has been mouth-

ed about this \$16,881.26 (giving the exact amount), that even the women and children have come to look at it as a sort of matter-of-course, a sort of dead duck. I would not wonder if, when it gets the endorsement of this body, it will be as the poet says:

"Vice is a monster of hideous mien:  
To be hated needs only to be seen.  
But often seen; familiar with its face;  
We first endure, then pity, then embrace."

And we have reached the embracing period, or nearly so. It will be when this body shall say that no crime has been committed. Let me say as an introduction to the law I am about to quote: There is enough in this case to make at least six of the ordinary old-fashioned impeachment trials. It will not be very strange if in the trial of a case of impeachment, the authorities are not found abundant upon any proposition that may arise, and for the reason, that in the Senate of the United States there have been no less than six impeachment trials altogether, and no less a number in the different States. Before we introduce our authorities it is well to inquire where we need to separate, and on what points we agree. We agree that by the English Common Law there was the power to try offenders by impeachment outside of the office, and especially to try them while in office. I think we need not go across the waters for authority. I think there is plenty of authority under the common law in our own States, for inquiring not only into the offenses of the term of the trial, but also in a former term; and further, that there is abundant authority to warrant a trial after the person has retired from office, when he is a private citizen. If you will examine all the reports from the time of the first inauguration of this kind of trial down to the time these articles

were passed upon by the House, there is but one rule, and that is that these offenses having been committed when in office, that take him where you may find him, he is liable to be impeached at any time, whether in or out of office. It has been claimed that the Constitution of the United States is different from our Constitution on this question. But I will endeavor to show that it is precisely the same. And let me state here that in the different trials had, it is held that under the same law any individual can be impeached. Section 6 reads:

"The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present."

Then comes section 7:

"Judgment, in cases of impeachment, shall not extend further than removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law."

I will read the Constitution of the United States, in order that you may better understand the authorities that were presented yesterday, and show how it is that there should be some doubt expressed by Judge Story in his commentaries, as to whether a party in office at the time could be impeached. Section 4, article 2, of the Constitution says:

"The President, Vice President, and all civil officers of the United States, shall be removed from office, on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

That word "shall" has been the stumbling block; and without it no

commentator would, for an instant, say that there was no instance where a person committed a crime in or out of office, any more than a State would in regard to one of its officers. I will show you the parallel runs side by side all the way:

"The President, Vice President, and all other civil officers of the United States shall be removed."

Now you will see the difference between that and our own. Our Constitution reads thus:

"SEC. 28. The House of Representatives shall have the sole power of impeachment, but a majority of the members elected must concur therein. Impeachment shall be tried by the Senate, and the Senators, when sitting for that purpose, shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the Senators."

This is almost precisely like the first section of the first clause in the Constitution of the United States. Then comes section 29.

"The Governor, Secretary of State, Auditor, Treasurer, and Judges of the Supreme and District Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under this State; but the party convicted or acquitted, shall, nevertheless, be liable to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office in such manner as the Legislature may provide."

How? What, gentlemen, about that? Shall these be impeached? No. That is not the language. The language is that these "shall be liable to impeachment" for misdemeanors of their office. I admit that the difference would not be material. It would not change it materially, but then more accurately in accordance with

the intention here, that is to say that an individual who holds any one of these responsible offices may, while holding them, incur the liability to be impeached; and this is in accordance with the true intent and spirit of the provision of the Constitution, that if a man shall demean himself as to gain the approbation of the people on the one hand, he would gain the plaudits "well done good and faithful servant;" and on the other hand if he was guilty of misdemeanors in office he shall have hanging over him the sword of justice, saying to him "If you dare to depart one hair's breadth from the Constitution you shall be liable to be impeached."

"The Governor, Secretary of State, Auditor, Treasurer, and Judges of the Supreme and District Courts shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only—"

Here is another thing, and Judge Briggs did not dwell upon it as I supposed he would. And then the Judge quotes Story upon the Constitution. That is not so; it is simply a limitation of your power. And within that limitation your power is absolute and supreme, as it were, over the common law. And within that limit you can do anything you please. Judge Briggs said, in response to that proposition in the paper, that it could not be done. Ask him if he will drop down off his stilts and tell me the provision violated; whether it extended beyond removal and disqualification, and if it did not, what was the matter with it? I undertake to say you can do just what you please within the limit. You may say disqualification or removal or *vice versa*. It is so settled distinctly by abundance of authorities. I wish to call your attention to one proposition, and that is, that it is a criminal offense. To be sure, the punishment

is not of the same nature as that inflicted upon criminals of ordinary character, yet it is surely a punishment,—a punishment that is as surely inflicted. I quote from section 12 of our Constitution:

“The Governor shall have power, after conviction, to grant reprieves, commutations and pardons, for all crimes and offenses, except treason and cases of impeachment, upon such conditions as he may think proper.”

Again, in section 8, we find that

“No person shall be held to answer for a criminal offense unless on the presentment or indictment of a grand jury, except in cases of impeachment.”

So I show you authority to prove that this is not only a crime, but that it is to be treated in the manner we treat other crimes; to be punished as other crimes are to be punished. If this be so, I ask what is the difference between a trial before this tribunal and other tribunals. In our general laws we find the following with regard to the punishment of Judges of election for malfeasance in office. I quote from page 108:

SEC. 44.—Any judge of the election who shall, after the opening of the polls, put a ballot or ticket into the ballot-box, except his own, or such as may be received in the regular discharge of his duty, shall, on conviction thereof, be imprisoned in the penitentiary not less than two years nor more than five years.

I read from the laws of 1869, page 207, section 76:

“If any County Treasurer shall willfully and negligently fail to settle with the State Treasurer at the time and in the manner above prescribed by law, he shall forfeit to the use of the State the sum of \$500, which sum may be recovered of him or his sureties, on suit brought by the State Treasurer in any court of this State, having jurisdiction; or, in case of failure of the State Treasurer to bring such suit, then any citizen of the State may bring the same.”

Now, for the benefit of the honorable gentlemen on the part of the respondent, I read from page 214, section 103 of the same laws:

“If any County Treasurer or other officer or person charged with the collection, receipt, safe keeping, transfer, or disbursement of the public money, or any part thereof belonging to the State, or any county, precinct, district, city, town or school district, in this State, shall convert to his own use, or to the use of any other person or persons, body corporate, association, or party whatever; or shall use by way of investment in any kind of security, stocks, loan, property, land or merchandise, or in any other manner or form whatever; or shall loan, with or without interest, to any company, corporation, association or individual, any portion of the public money or other funds, property, bonds, securities, assets or effects of any kind received, collected or held by him for safe keeping, transfer or disbursement, or in any other way or manner, or for any other purpose; or, if any person shall advise, aid, or in any manner participate in such act, every such act shall be deemed and held in the law to be an embezzlement of so much of said monies, or other property as aforesaid, as shall be thus converted, used, invested, loaned, deposited or paid out as aforesaid, which is hereby declared to be a high crime and misdemeanor, and upon prosecution, trial by indictment, and conviction thereof, before any court of competent jurisdiction in this State, such County Treasurer or other officer or person shall be sentenced to imprisonment in the penitentiary, and kept at hard labor for a term of not less than one year, nor more than twenty-one years, according to the magnitude of the embezzlement, and also to pay a fine equal to double the amount of money or other property so embezzled as aforesaid, which fine shall operate as a judgment at law on all the estate of the party so convicted and sentenced, and shall be enforced by execution or other process, for the use only of the party or parties whose money or other funds, property, bonds or securities, assets or effects of any kind as afore-

said, have been so embezzled; and in all cases, such fines, so operating as a judgment, shall only be released, or entered as satisfied by the party or parties in interest, as aforesaid."

Now suppose that the Governor of this State, who is charged here with having taken a portion of the school money, that portion which by our laws belong to the school fund, coming from the 5 per cent. due us from the sale of lands within this State, was now before the ordinary criminal tribunals for the offense provided for in the section just read, and it should be claimed in his defense that the embezzlement was performed while in a former term, then, could not the same defense be set up, as well in a case of indictments as in a case of impeachment? But I have said enough on that point to show you the complete parallel between the two. Now let us see a little about this stumbling block that the Judge lays in our path. He tells you that it is an able authority, and we know it is so because Judge Story is good authority. I read from Story's commentaries on the Constitution, Vol. 2. It begins at Section 799. The Judge did not ask us to go back so far as that, but we will see what Story says.

"Another inquiry, growing out of this subject, is, whether, under the Constitution, any acts are impeachable, except such as are committed under color of office."

That is the first question, and his reason, I will show directly, applies to that other branch, because he goes on to state that the individual while he is in office may commit offenses that are not exactly connected with that office, but which are unbecoming in a person holding such office; offenses, such as gross drunkenness, are impeachable. He adds:

"And whether the party can be impeached therefor, after he has ceased to hold office."

That comes right to the point, I take it. And now, then, what does he say further.

"A learned commentator seems to have taken it for granted, that the liability to impeachment extends to all, who have been, as well as to all who are in public office."

Story took the question kind of by instinct. If he could have attended this trial, he would have no doubt revised his commentaries on the Constitution. He had not studied Redick and Briggs on the Constitution. In section 800 he says:

"It does not appear that either of these points has been judicially settled by the Court having, properly, cognizance of them. And in the case of William Blount, the plea of the defendant expressly put both of them as exceptions to the jurisdiction, alleging that at the time of the impeachment, he, Blount, was not a Senator, (though he was at the time of the charges laid against him,) and that he was not by the articles of impeachment, charged with having committed any crime, or misdemeanor, in the execution of any civil office held under the United States, nor with any misconduct in a civil office."

Now then in section 801:

"If then there must be a judgment of removal from office, it would seem to follow, that the Constitution contemplated that the party was still in office at the time of impeachment. If he was not, his offense was still liable to be tried and punished in the ordinary tribunals of justice. And it might be argued with some force, that it would be a vain exercise of authority to try a delinquent for an impeachable offense, when the most important object, for which the remedy was given, was no longer necessary, or attainable. And although a judgment of disqualification might still be pronounced, the language of the Constitution may create some doubt, whether it can be pronounced without being coupled with

a removal from office. There is also much force in the remark, that impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender, as to secure the State against gross official misdemeanors. It touches neither his person, nor his property. But simply divests him of his political capacity."

And now he says in section 803, page 273:

"It is not intended to express any opinion in these commentaries, as to which is the true exposition of the Constitution on the points above stated. They are brought before the learned reader, as matters still *sub judice*, the final decision of which may be reasonably left to the high tribunal constituting the Court of Impeachment, when the occasion shall arise."

That is his conclusion on the subject. Now then in the case of Blount:

"That although true it is, that he the said Wm. Blount, was a Senator of the United States from the State of Tennessee, at the several periods in the said articles of impeachment referred to; yet, that he, the said William Blount, is not now a Senator, and is not, nor was at the several periods, so as aforesaid referred to, an officer of the United States. I observe it is stated in the plea that Wm. Blount was not an officer of the U. S. at the time of the act done charged in the articles of impeachment. This objection is removed if either of the grounds which we have taken be maintainable: 1st. That impeachment is not confined to officers, but extends to every citizen; 2d. That a Senator is an officer of the U. S. It is also alleged in the plea that the party impeached is not now a Senator. It is enough that he was a Senator at the time the articles were preferred. If the impeachment were regular and maintainable, when preferred, I apprehend no subsequent event, grounded on the wilful act, or caused by the delinquency of the party, can vitiate or obstruct the proceeding; otherwise the party, by resignation or the commission of some offense which merited and occasioned his expulsion, might secure his impunity. This is against one of the sagest maxims of the law,

which does not allow a man to derive a benefit from his own wrong."—*Annals of Cong.* p. 2281.

That is what Bayard says on the part of the Managers. Then followed the argument of Dallas and Ingersoll, and they were interested in maintaining the proposition that a party not now in office could be impeached. This, you will remark, was the first case ever brought before a court of impeachment, and the first time the question was ever raised, approximately or remotely, before the Senate of the U. S. At the conclusion of Mr. Bayard's speech, Mr. Dallas addressed the court. He said:

"That there was room for argument, whether an officer could be impeached after he was out of office; not by a voluntary resignation to evade prosecution, but by an adversary expulsion.

This is the best he has to say upon the subject. Mr. Dallas, a very noted lawyer of his day, instead of spending two whole days in arguing this question on the part of the prosecution, says there was room for argument, whether either under the Constitution of the United States an officer could be impeached after he was out of office. That is what he says, and he is interested in maintaining the decision. Then comes the argument of Mr. Ingersoll who is interested on the same side, and in maintaining these propositions:

"I recur, then, fortified by these general reflections to the words of the 4th section of the 2d article. My position is, that the clause in question was intended, and operates for the purpose of designating the extent of the power of impeachment, both as to the offenses and the persons liable to be thus proceeded against. It will be of use here to recollect, that the constitution had previously provided for the purity of the legislature in the 2d clause of the 5th section of the 1st article by empowering each house to

punish its members for disorderly behavior, and, with the concurrence of two-thirds, to expel a member. No clause similar to that which is introduced into some of the State Constitutions (that a member expelled and then returned, is not liable to be expelled again for the same offense) is to be met with in the Federal Constitution; and therefore the Senate has an unlimited power to expel any member they shall deem unworthy their society.— *Annals of Cong.* vol. 2, p. 2283."

Again from the same authority:

"In a previous paragraph to-wit: the 7th clause of the 3d section of the 1st article, it is provided that judgment in cases of impeachment, shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; that is, judgment must be either—1st, Removal from office; or 2d, Removal and disqualification; or 3d, Disqualification without removal, where the person convicted is not an officer."

He has not, up to that time, referred to this 4th section of the 2d article, and he says it must then be disqualification without removal where the person convicted is not an officer. What else does he acknowledge? and he is here, as I daresay, are the gentlemen for the respondent, to maintain the proposition.

"I acknowledge," he says, "that the argument is connected with its respective principle on each side, and that unless there is a restriction of the power of proceeding by impeachment, by this 4th section of the 2d article, it is without limit, both as to offenders and offenses."

A very able lawyer arguing this, the first impeachment ever brought before the United States, and arguing that there could be no impeachment out of office, because, he said, there should be impeachment, but says that without section 4 of article 2 they would be absolutely without limit, both as to offender and offenses. Please to put that in your pipe and

smoke it. I will undertake to say that in all the authorities shown, not one single authority shows or tends to show, the position that was assumed, and why? Because I will undertake to say, once more, in all the range of juridicial literature, touching this question of impeachment, in England or America, there is nothing that rebuts the proposition I have presented to you. The authority is simply this, nothing more or less, that wherever the point has been reached it is precisely the same, and made to run parallel with similar transactions, and that it is punishable whether he be in office or not. In reply to this, I quote from *Annals of Cong.*, Vol. 2, page 2,300:

"The use of the law of impeachment is to punish, and thereby prevent, offenses which are of such a nature as to endanger the safety or injure the interests of the United States; and the object of the Federal constitution was to provide for that safety and to protect those interests. Such offenses may be committed, as well by persons out of, as by persons in office; and although the punishment can go no farther than removal and disqualification, which restriction was, perhaps, wisely introduced in order to prevent those abuses of the power of impeachment which had taken place in another country, yet it may often be extremely important to prevent such offenders from getting into office as well as to remove them when they are in."

Now, for instance, we will suppose that some person is brought before you, some scallawag of a fellow who had got into office, and, while he was in office had behaved himself so badly that it was considered necessary to remove him from his office, and declare him disqualified from holding office, you would not stop at merely removing him from office, for if he is not disqualified, there is nothing to prevent his being re-elected to



precisely the same place from which he has been removed. I can cite you to a recent case where a member of Congress was removed from office, who went back home, and before his seat was fairly cold, was again elected and sent back to Congress. Is there not some reason to say that you should be able to disqualify a man who is out of office, from holding office, the same as if he were in office? Ponder that, gentlemen, and see if there is not substance in it. Gentlemen, there are but thirteen of you—the smallest impeaching body ever assembled in the world. The House of Commons, sitting during the seven years of the trial of Warren Hastings, numbered several hundred. I believe at the close of the trial there were sixty-nine members. Nevertheless, gentlemen, your responsibility becomes even greater than if there were more of you. Few of you have had occasion to examine the law to any great extent, but you are to take the responsibility upon you of settling great questions of law. I point now to the trial of Judge Hubbell, as perhaps one of the latest State impeachments. Searching this book through, you will find that it is all through in the same general direction of the precedents established in similar cases. Something has been said about your making history; but it seems to me you are called upon simply to add to history—to add what has been done in similar cases, and to follow established precedents. If I can show, gentlemen, upon this important question, that there has been but one current and that has run without a ripple, there have been no exceptions. And now are you thirteen men going to set aside the experience of years and make a law for yourselves? This case that is presented occurred about thir-

teen years ago in Wisconsin. It found the accused holding an office, as this case found the Respondent holding an office; and the point was raised, not vauntingly, not as points have been raised here, because there was some little *punctillio* there, and the question was submitted without argument, and why? Because they did not choose to resort to villanous tricks,—they did not want to go into the thieves practice. There is a difference in the way things are done and the way we look at them, whether we are down the river or up the river. Such a defense as this is the most unheard of since Faust invented letters; to say that a man, when in office, and having certain duties laid upon him in connection with the other duties of his office, is not to be held accountable for his acts. Such defense used to be conducted with some degree of punctillio. You, understand that, don't you? (To Mr. Redick.) (Laughter.) On the trial of Judge Hubbell, page 70, Mr. Knowlton said:

"I have two questions which I wish to submit to the Court, two legal propositions, which, as counsel for the defendant, I am at liberty to waive."

He does it under constraint—under difficulty:

"Whether this court has the constitutional jurisdiction to act upon charges of impeachment preferred by the Hon. 'The Assembly.' He raised that point in the first place that the House of Representatives only had the power to bring articles of impeachment, and not as the Assembly."

A point infinitely stronger than the commissioner point. His second proposition was:

"If it has such general jurisdiction, whether that jurisdiction must be confined to charges of offenses committed, or alleged to have been committed by the respondent, in, or during the exercise of the office which he now holds."

or whether it can consider charges for offenses, or crimes committed, or alleged to have been committed during the existence of term of office, either as a Judge of the Circuit or Supreme Court after such term has expired."

I think that puts it in pretty square, don't it? Pretty near as we have got it, I think. Whether we can impeach the governor for anything done before the hand of the clock passed the hour of 12, midnight on the 18th day of January last. On page 77, Mr. Dunn moved to amend the propositions offered by the defense, by the adoption of the following resolutions:

*"Resolved, That this court has the constitutional jurisdiction to try an impeachment preferred by the Hon. 'The Assembly of the State of Wisconsin.*

*Resolved, That this court, on the trial of the impeachment now pending, have jurisdiction to inquire into offenses charged to have been committed, as well during the former term of office of Levi Hubbell, Judge of the Second Judicial Circuit of this State, as into offenses charged to have been committed during the present term of his said office."*

That puts it pretty square again, I think. And now, on page 79, Mr. Dunn says:

*"In order to give distinctness to the propositions offered by the counsel for the defense, I will offer the resolutions I introduced, and withdrew this morning."*

*"The vote was now taken upon the first resolution of Mr. Dunn, and it was adopted unanimously. The court then voted upon the second proposition, and adopted it 19 to 5."*

That is pretty square again; that is the way we look at it. Now then, in the final argument by Mr. Ryan, on the part of the managers he says:

*"The first of these defenses, Mr. President, which covers a large part of this prosecution, but not the whole of it, is, that the defendant is not subject to impeachment for acts done during his former term of office. That*

question was started, sir, in the beginning of this trial.

*Mr. Knowlton:—It was not argued by us.*

*Mr. Ryan:—I apprehend it was argued by Jonathan E. Arnold. I cannot say whether or not he is included in "us."*

*Judge Hubbell:—I will relieve the gentleman from the necessity of discussing that defense, I rejoice that this inquiry has gone the whole length of my judicial course.*

*Mr. Knowlton:—The point was raised by me, but was not argued on our side.*

*Mr. Ryan:—You are mistaken.*

*Mr. Knowlton:—Mr. Arnold argued it more than once, and his arguments are before me here in print, as reported.*

*Judge Hubbell:—It was not raised, or argued by my desire."*

Mr. ESTABROOK. Now what do you think of the making of two lengthy arguments for the Governor on these questions here? If it had been a case of larceny before a justice of the peace, tried by some pettifogging lawyers, I would expect it. But, sirs, when we come into a high court here, and he brings in honorable attorneys for his defense, and they resort to this little pettifogging, it does not look well on the record, at least. But, gentlemen, I have argued this question as though the offender was out of office. This is not the case. This same man, David Butler, is still in the office which he has held for five or six years. He is still in office, from which you can remove him. Is it reasonable to hold that the mere swinging of the pendulum past a certain hour, on a certain day, is to determine this matter? Let us see what would be the effect of that. Suppose that you say for anything committed at the eleventh hour—suppose prior to that time he had committed these offenses and it had never been known, he had so adroitly

covered his tracks and manipulated investigating committees, and adroitly manipulated people at the polls, and say that of the whole business up to that time nothing was known of the derelictions and misdemeanors in office that are the subject of this complaint. Are you going to say, one minute after the hour of midnight all those sins are atoned for; that he has now sought and found the City of Refuge, and there throws himself up to inspection and says, "Gentlemen, I have got your school money, help yourselves as you may." Does it work such a change as that? It would be wonderful if it did. Then we will suppose there is nothing against him, only telling a palpable falsehood when he is charged with it by a minor officer. It is not a case of drunkenness, such as was brought before the impeachment court of Congress. But it is simply a giving of false information when he is asked to tell the truth about a very important interest. Suppose he is on trial, and by some little manipulation or invitation to partake of hospitality, he finds out that eight or nine of the members of this court are going to pronounce him guilty; and don't you see now that he is not only charged with the crime, but is to be found guilty of it? Don't you see that all he has to do is to walk in before the honorable President of this Senate and say; "Sir, here is my resignation. How do you like the thing as far as it has gone?" He is now no longer in office, and according to the decision here you have no jurisdiction over him. He is simply an ex-officer. Is this the way to construe your criminal laws, and this the view to take of your important rule that is to control the action of a body like this? It enables a party to do that which, according to simple A B and C, no man is

allowed to do—to take advantage of his own wrong.

Manager MYERS. I would ask that the Senate adjourn. The counsel is exhausted.

Mr. REDICK. I shall interpose my objection. We want this thing finished now, without an adjournment. We don't want to waste a day. I would like to hear the gentleman. He is not exhausted. He is able to talk a week. He has only half an hour of time left.

Mr. ESTABROOK. There is no use, he says, in wasting a day. It may savor of confidence in one's innocence—and knowing that perhaps many witnesses are absent, and knowing best how they came to be absent—to be constantly keeping us under whip and spur. But I do not intend to be kept under whip and spur. I am not used to it. I shall take my own time in this matter, and I don't propose to be constantly harrassed.

Senator GERRARD. I move that the court take a recess until three o'clock, as a special order of the Gillespie case has to be called at 2 o'clock.

Senator HASCALL. I hope that motion will not prevail. It will not take us five minutes to dispose of that business, and I move to amend by fixing a quarter past two.

The amendment prevailed and the President declared the court adjourned until that time.

#### AFTERNOON SESSION.

The Senate met at 2:15 P. M. All the Senators answered to their names:

Mr. ESTABROOK. Mr. President, Senators and Managers, I desire to call your attention to a few other points. I will read you what Story says. I read from section 807. "Story on the Constitution."

"If he does not appear in person, or by attorney, his default is recorded, and the Senate may proceed *ex parte* to the trial of impeachment. If he does appear in person, or by attorney, his appearance is recorded. Counsel for the parties are admitted to appear, and to be heard upon an impeachment."

I think I have now passed over the entire ground without regard to the last proposition. The point of the exceptions seems to be that David Butler, acting in the capacity of Governor of the State, and having had committed to his care, in conjunction with other officers of the State, certain other interests of the State, and thereby having become a Commissioner, and having entered upon and accepted the position, he did these acts as Commissioner, and not as Governor. It will be remarked that the Statutes read like this:

"That the Governor, Secretary of State and Auditor, be, and are hereby appointed Commissioners to sell lands, erect Public Buildings." etc.

Now it will, in the first place, be remarked that it is not David Butler, mentioned as Commissioner, but it is an officer under the Constitution of this State to whom is committed these additional interests and, in conjunction with other officers is appointed Commissioner to transact this business. It will be seen by our Constitution that other officers of the State may be tried and excluded from office as the Senate directs. Now suppose one of the commissioners of Public Lands is impeached, and the particular Commissioner named as the Governor, and that he be tried thereon and convicted, and suppose that the Court should declare that in consequence of his misdemeanors, he should be removed; now I ask you who would be removed? This brings to view all the principles in this question.

Now I have here the report of the commissioners of public buildings, and I ask you to bear with me while I refer to it. On the 24th of Feb., 1869, these commissioners advertised for architects to put in bids for the construction of a State University and Agricultural College. By reference to that notice you will see that it is signed "David Butler, Governor, T. P. Kennard, Secretary of State, Commissioners." On the 23d day of June following D. J. Silver and Son, being the lowest bidders, were awarded the above contract and it was approved by "David Butler, Governor, and John Gillespie, Auditor, Commissioners for the location and erection of public buildings." On the 13th day of August, 1869, sealed proposals were asked for the completion of the State University and Agricultural College and also for the State Lunatic Asylum. Who issued this advertisement? "David Butler, T. P. Kennard and John Gillespie, Commissioners." This time failing to sign himself as Governor. But on the 18th of August, 1869, "David Butler, Governor," is again found recorded in the commissioners report. So, then, I can understand the confusion of the gentleman (Mr. MARQUETTE) when I asked him yesterday "if the commissioner was removed, who would be removed?" Certainly it would be David Butler, Governor-Commissioner. There are some things that are exceedingly difficult to argue. If a man should ask me to make an elaborate argument on the sunlight now shining through that window, it would be hard for me to do it. So it is with this question. When this thing was first proposed I thought it was a joke. Now, then, we will pass to a question that has not been touched by the honorable gentleman: that is in reference to this whitewashing

transaction. I referred to that a little at the beginning of my argument. I may say as to that, it is nothing more than any other gentlemen would have done who had been gathered at the sumptuous board of the Executive at his magnificent chateau on the hill yonder. This act takes the pardoning power entirely out of the hands of the Executive, at this called session, particularly when setting over on "yankee hill." Gentlemen, it used to be that a pardon could not be granted, even by the Governor himself, until the party has been convicted. But they, without trial, say to the Executive, you can go unwhipped not only for the past but for all that may be done—everything whatever that may be done or said by him. Why, if this Senate could come to that conclusion asked by these gentlemen, it seems to me it would be an idle thing to consider any of these propositions before you. I may simply close now by referring to the points we have made. All the cases cited show that the same course has been pursued here as in similar courts in England. All the decisions are clear and explicit that you can go back and inquire into acts done during the former term of office. And we have made the other matter clear. I think, by showing you how he himself regarded it; that is, that he had done these acts in every instance as a Governor. He was Commissioner *ex-officio*. Tell me whether there is to-day any Commissioner? If so, is it not Mr. James, by reason of his holding the office of Governor now? The Governor himself says here in his proclamation:—

"And when so convened, shall transact no business except such as relates to the object for which it was so convened; to be stated in the proclamation of the Governor," &c.

Now, then, I don't know what may be the result of the action of this body upon this question. As a matter of course it is one of considerable moment. If this Senate shall say that these exceptions are well taken, I don't know what the Managers may think, but I shall be satisfied, for it seems to me that it cannot be made more plain, though one should raise from the dead and proclaim our position.

Mr. REDICK. Mr. President and Senators: You must pardon me if I should exhibit warmth upon this cold-blooded legal question, over which, in a court of law, there would be no sympathy. But I designed to stand up like a man and argue the pure legal question, as the gentleman who preceded me should have done—to say whether these exceptions are well taken or not. But when I see, Senators, the disposition that is manifested by the counsel given in charge of this case, to hear at this late hour statements that will add another sore to the punishment and public opinion that has already been manufactured, and to follow David Butler during his life, and his children after him, I have the right to say that after the falsehoods that have been perpetrated upon him by the mouth of the gentleman who has just sat down, they can take up our side and read that as a stand-off. This, then, is my apology for going outside of the legal question. I have been Estabrook's friend when he had none but myself left. I attack him not as a personal enemy as he has shown himself of the Governor, but as a lawyer. As little as I regard my reputation I would not have the record of that gentleman's legal propositions sent broadcast over the world for all the school fund you [turning to Estabrook] wish you had in your

pocket. If I had the chance or time to go at and show the naked proposition, the fallacy and pettifoggery of my friend on the right, I would do it. But, thank God, I am called upon only to answer the last one. Before dinner, my friend had made no point that I consider worthy of an answer; but now he is filled with a good dinner obtained at the Tichenor House, and comes here with another point on the Commissioners. But no, Senators, he has not attempted to tear down the legal propositions of Mr. Briggs or Mr. Farquette. But on the Commissioner question he has made some pertinent remarks. Let me say to you what is recognized in you as a body, and what is required of you in this defense. Mr. Story, the able commentator, an authority we all take, when speaking on the Constitution, says the great objects to be attained in the selection of a tribunal for the trial of impeachments are—impartiality, integrity and intelligence. If either of these are wanting the trial must be radically imperfect. Now, is there any doubt of this honorable court, which I am addressing, being possessed of all these qualifications? I believe they do possess them, and I have every confidence in them. Story is authority we all take; we do not go to England for our law, but take him as being the highest authority to be produced. He says in a trial of this kind there are several elements required in order that the Government and the accused may have a fair and impartial trial. I have every confidence this court has two of these elements above all others prominent—integrity and independence. He goes on to tell and warn you against public pressure. He says when a man is accused of crime, the accuser and his friends will manufacture things to sustain the

charge and tear down the accused. To accomplish that end, the entire press of the party of politics opposite to the accused is brought to bear, and columns are filled with false statements and loose rumors against the accused, thereby shaping, if possible, public opinion, and bringing a pressure to bear upon this high and honorable court, if possible, to frighten and induce them to do what, if left to their own convictions, they would consider a gross injustice to the individual accused. And David Butler, in this case is situated exactly as Hubbell was in Wisconsin, for the reason that there there was a fight in the Democratic party. Is this not true of the case of David Butler? Three months ago, he was elected to the high position he now occupies, by a large majority of the votes of the people, but since these charges were preferred against him, many of his own political friends have abandoned him, and joined in the hue and cry of Impeach him! Impeach him! Impeach him! And, until quite lately David Butler has stood almost alone, with no paper, save and excepting one, the *State Journal*, in Lincoln, that had manhood and independence enough to demand, before they convicted him by public sentiment, a fair and impartial trial. And David Butler, knowing and believing his intentions to be good, and depending upon the good heart of his neighbors, and those who knew him best, went on, and by so doing he has got himself here in the fangs of these gentlemen—disappointed men. It seems miraculous that from the date that Mr. Robinson was appointed Attorney General of the state, my friend, Experience, has had his mouth open like a Dutch chest against David Butler; for he expected the position. I know my

friend on the right does not permit such little things to trouble him. He is one of those noble fellows who never allow things to trouble them. For his taxes are all paid, and he lives easy and expects to die happy. We have been persecuted and abused, and it was unkind of my friend [Mr. Doom] to get up and make false charges. It would be treating an enemy wrong to have it made public that he did that, if it was untrue. David Butler went into the Legislature and protested against the investigation being had, because it was not embraced in the call, he believing they intended to ruin him. He went in as he ought to have done, and said, "If this is the spirit you manifest, I have rights, and I am here to maintain them." He asked that the law might be vindicated and nothing more. And yet the gentleman says he made a profane speech. After all this they appointed an investigating committee of his enemies, and they come out and report that while he had done just, what his answer says here, they find he had done it for the best interests of the State, and in perfect good faith. As the report says, "to build up Lincoln, and thereby promote the interests of the whole State." The committee appointed to investigate his acts found that everything he had done—while he had violated some of the technicalities of the law—had been done for the best interests of the State, and so he was exonerated from blame. I wish to reply to Mr. Estabrook simply. I shall not reply to Gen. Estabrook's peculiar reading of the Constitution. Now the Constitution provides for the election of Governor, Secretary of State and Auditor, and provides what the duties of these officers shall be, as follows:

SEC. 7. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices; and shall see that the laws are faithfully executed.

That is number one.

SEC. 8. He shall communicate at every session, by message to the Legislature, the condition of the State, and recommend such measures as he shall deem expedient.

That is number two, and here is number three:

SEC. 10. In case of disagreement between the two Houses in respect to the time of adjournment, he shall have power to adjourn the Legislature to such time as he may deem proper, but not beyond the regular meetings thereof.

Now, Senators, those are the duties imposed upon him. The first section, under the head of "executive," provides for the election of an Auditor and Treasurer. Now, then, drop down to section 20, and what does it say there? Why, that "the Secretary, Auditor, and Treasurer of State, shall severally perform such duties as shall be prescribed by law." But there is nothing said about the Governor. Now, then, what is the conclusion? Why, the proof is overwhelming that when the Legislature passed that resolution making Governor Butler Commissioner, they exceeded their authority; for we find nowhere in the Constitution any authority given them by which they can impose additional duties upon the Governor, other than those clearly defined as belonging to the position. I ask, Senators, that you read that carefully, and you will find that is the truth in the matter; and every paper the Governor has signed in the capacity of Commissioner is null and void; and every one having his signature to it is no better than if it were Mr. Doom's, here. But the other two

gave it authority. The Governor could have refused to accept if he wanted to, but he chose to accept the position; yet his name is worth nothing to those deeds. So now that sweeps this gentleman, it seems to me, entirely out of the question on the Commissioner subject. This gentleman on my right (Mr. Estabrook) says that when Governor Butler was suspended, Mr. James becomes Commissioner because he is Governor; then, after taking another leap, he comes round and says Tom Kennard is the only Commissioner. Then, after taking another turn, he says that James is Governor, Secretary of State, and Land Commissioner all in one. Now that is a good deal for so small a man as James to take upon himself. Suppose the law had said: I appoint as Secretary, or Auditor, Sheriff Hoile, of Douglas county, or the Sheriff of Lincoln county, or the Sheriff of Otoe county. Is it not a mere description of the man? It is simply calling them by their official name. But it is idle for me to argue this question, if I am right in my first position. What the gentleman has read from the Hubbell case is only rambling discussion between the lawyers, Judge Hubbell himself not concurring in it. The gentleman then laughs and asks us why we do not do as Judge Hubbell did? I will tell you. We want to stand on our rights here and the merits of this case. And if you will take it on its merits we will beat you so bad you wont know what State you come from. [Laughter.] That is no legal opinion, Mr. Senators, nor authority, any more than the "say so" of lawyers would be to hang a man. Story on the Constitution, page 279, speaking on the subject of re-election says:

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"Cases may be imagined, where a momentary delusion might induce a majority of the people to re-elect a corrupt chief magistrate, and thus the remedy would be at once distant and uncertain."

Now this is our case right here. We are re-elected by the people; but he don't care, he says, like his friend Doc. Miller up there; impeach him on the broad guage anyhow. Let me tell you what is true. In that long trial of Andrew Johnson, so ably tried, and in all such courts since the trial of Judge Hubbell, not one lawyer cites the Hubbell case. But these gentlemen have cited it from the beginning of this trial. In fact, they have followed that case throughout; they have the same number of articles and specifications. This trial was one had in a sister State in her infancy. I believe at that time there was a certain gentleman, the Attorney General of the State, whose business it was to conduct that trial. I think his name was Experience Estabrook. Were you the man? "Yes sir," he says. He was the proper person to try Judge Hubbell, but for some reason he did not do it. Our law says that Governor Butler, if impeached, can be removed from office and disqualified to hold office, but Mr. Estabrook, says it is a crime and punishable as such. If so, we are entitled, before this Court, to the benefit of every doubt that may arise in the case. But we think it is not a crime, but simply a political offense, for which he is to be tried before this Court, and if this Court should find against him he would still be liable to trial and punishment on an indictment for the same acts. And I understand the House has ordered the Attorney General to commence suits against all these parties.



They live in the same city,—Mr. Gillespie, Mr. Kennard, Mr. Butler and Mr. Sweet, the treasurer. Here they were; the object of the act for the location of the capitol at Lincoln had but one object in view, and that was to remove the capitol from Omaha, locate it at this point and build up the South Platte country. And to insure success, they gave to the Governor and commissioners almost plenary powers. The object was a success. The people had so much confidence in the Governor, and in the Secretary and the Auditor, and they said, "We will make you commissioners; you shall take the capitol from Omaha, and build it at Lincoln, and we will trust you with the whole thing." They have built the capitol at Lincoln, and erected an ornament that shall stand up to speak for David Butler. You owe all to him. And after you have got all these things; after, you have got all these public buildings erected you now propose to impeach the man that has been the head and front of you. The man who has made Lincoln all she is. Oh! Ingratitude! If there is anything in the human soul I detest, it is that! And, Senators, David Butler—you know him better than I do. He will show for himself what he has done. If there had been anything wrong in him—why, sir, there is another man in this outfit; a still, quiet man who says nothing; goes along, coolly and deliberately, taking care of himself, but depending on the Governor to lead off in every move to advance the interests and carry out the original idea and scheme. Why, sir, General Estabrook, talked about stealing the school fund, and is mad because he has not got it in his own pocket. Why, Sir, read the answer we made to him; it speaks for itself. The answer ad-

mits we borrowed the money from James Sweet, Treasurer, that man who bears the pretty name "Sweet;" so sweet that Butler could not turn the corner of a street without smelling the sweetness of his blossoms; so sweet I did not want any of his sweetness about me. He stands back and lets David fight the whole alone. David Butler stands here impeached before this Senate to-day, for acts done as Commissioner, when it took three to do them, even if he had any authority to act as Commissioner. They held him up and made him answer for the sins of "Honest John" and that man, Sweet. I know Governor Butler has done nothing here but in the best of faith to carry out the scheme; and believing that to be true, I will stand up always for him; and I will ask this Senate, in passing upon this—as Estabrook says, to keep the whole thing in view. See what Governor Butler has done. Look at the men who were engaged with him; and ask who was the spirit that went out in this enterprise, and built up this South Platte country. It was David Butler from the beginning to the end. If it had not been for him we should not now have this beautiful edifice in which to try this important case. Now, they propose to depose him and substitute somebody else—

Senator HASCALL. Mr. President, I rise to remind the gentleman his time has expired.

Senator GERRARD. I move that the Senate now retire to take into consideration the matter submitted to them by the counsel for the respondent, and the Managers on the part of the House of Representatives.

The PRESIDENT. The question now is upon the adoption of the motion of the Senator from Platte.

The following was the result:

Ayes—Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, Mr. President. Total, 13.

The Senate then retired.

#### Fourth Day's Proceedings.

FRIDAY, 10, A. M.

The Senate sitting as a Court of Impeachment, was called to order by the President. All the Senators present.

The PRESIDENT. The Senate on yesterday evening, duly considered the exceptions taken, and have adopted the following, which the Secretary will read:

*Ordered.* That the exceptions last mentioned in respondent's answer, whereby respondent submits whether he shall be held to answer any of the said articles or specifications, because he insists that he ought not to be held to answer the same on account of the acts, doings and omissions complained of being, or alleged to have been committed or omitted prior to the commencement of his present term of office of Governor, be and the same is hereby overruled.

*Ordered.* That the remaining exceptions filed by the respondent in this case and contained in respondent's answer, herein be, and the same are hereby, overruled.

Senator GERRARD. The question remains upon the motion for continuance filed by the Managers. Do the Managers still wish to entertain the motion?

Mr. ESTABROOK. The motion for continuance is still pending, and I have therefore prepared a motion for continuance for cause, for sixty days. I ask it upon affidavits, and also oral testimony which will be presented before this court.

Senator HASCALL. Mr. President, the order adopted by the court prior

to the argument of the exceptions, indefinitely postponed the motion at that time pending, for a continuance of the case sixty days.

The PRESIDENT. The position taken by Senator Hascall is sustained, and the chair rules that the order referred to, indefinitely postponed the motion heretofore made, for a continuance.

Manager PORTER. I was under the impression that the motion asked for by the Managers, was simply held in abeyance, to be acted upon, after the argument produced by the respondent be acted upon.

Manager MYERS. The motion that was made for a continuance was superceded by the action of the Senate, requiring immediate decisions of the exceptions. A motion will now be in order.

Manager PORTER. In behalf of the Managers, I would state that we desire that the list of witnesses subpoenaed in this case be read.

The PRESIDENT. The Clerk will read the returns made on subpoenas.

[Returns were read showing service had on the following named witnesses: Thomas L. Griffy, N. C. Brock, J. Cadman, M. A. McPherson. W. D. Fields, J. N. Cassell, J. W. Wood, James Quinn, James M. Riddle, L. Crounse, Elam Clark, Jessie T. Davis, Thomas F. Hall, C. S. Chase, E. T. Hudson, E. Veits, D. M. Baker, John Gillespie, Seth Robinson, John R. Patrick, A. J. Cropsey, Jas. Sweet, Charles C. Crowell. Also returns showing that the witnesses, R. D. Silver and M. J. McBird were not found.]

The following return on the McBird subpoena was read: "I called at the house of M. J. McBird, in Council Bluffs; saw the wife of said McBird; on being questioned, the said wife of

the said McBird stated that McBird left home on the 3d day of March, 1871; that she did not know when he would return; could not tell where he was at, or what his business was; that he telegraphed to her last week from Sioux City, stating that she, the said wife of the said McBird, need not be uneasy about him, the said McBird; that he expected to be away for several weeks." [Laughter.]

Mr. ESTABROOK. Now, Mr. President, I would like to have a list of the names of those witnesses who have been served, read.

The PRESIDENT. The Secretary will read the names of the witnesses, as requested.

[Names read, and the witnesses present answered to their names. Present, 10. 22 served.]

Mr. ESTABROOK. Mr. President, it seems out of 22 witnesses served, there are but ten present to answer to their names. This begets the necessity for us to ask that an attachment issue for the absent witnesses; this attachment will have to be returned on a day certain, and that would necessitate an adjournment of this case until such attachment can be returned. Particularly would we ask a continuance for the reason that one M. J. McBird and R. D. Silver, important witnesses, are absent; and that, too, under very peculiar and suspicious circumstances. This appears on the return of the Sergeant-at-Arms, and I don't see where the laugh came in on the reading of the return on the McBird subpoena, nor why any one should snifle, or hold their nose while reading it. We are prepared to show this on affidavit, and by witnesses brought before the bar of this Senate. We will show that this witness has been slept with, as a witness says, significantly "stayed with." We will

state, in affidavit, what we will prove by this witness; but I may perhaps state to the Court that we expect to prove by this witness, and by this witness alone, one of the blackest and most damning of the charges, and, we shall claim that because of the extraordinary efforts that have been made to get rid of this important witness.

Manager PORTER. Mr. President in behalf of the Managers we would offer this motion.

"In the matter of the impeachment of David Butler, Governor of Nebraska, the Managers on the part of the House of Representatives, now come and move the Hon. Senate that they make an order to adjourn the further hearing of this case sixty days from date."

Mr. MARQUETTE. Mr. President. I hope before that motion is filed, that we may have the opportunity to see the affidavits filed by the counsel for the Managers. And we shall urge that this continuance be asked on the usual form under law by filing affidavits, showing what they expect to prove by the absent witnesses. As we desire to be heard on the motion when it comes properly before this Court, we will not speak on it now.

Mr. ESTABROOK. I desire to have testimony taken at the bar.

Mr. MARQUETTE. We desire to have it in black and white.

Mr. ESTABROOK. We shall be compelled to ask that an attachment be issued, and to constrain the attendance of witnesses here before we proceed.

Senator GERRARD. Do I understand that the counsel for the Managers have filed an affidavit for a continuance?

The PRESIDENT. They have offered one.

Senator GERRARD. I desire to hear it read.

Mr. ESTABROOK. The affidavit sets forth what is expected to be proved. And if the honorable Senators desire that we should make our affidavit in writing, setting forth our reasons, we will do it. We state we cannot proceed at the present time for the want of a witness, McBird, who is absent, and by whom we expect to prove certain things, contained in the articles of impeachment.

Mr. REDICK. The honorable Senator from Platte suggests the very idea we claim. That is that the gentleman put on paper all he expects to sustain his motion with, so that we may be prepared to contradict in our answer. We are not here to contradict A. B. and C. Mr. Estabrook knows an affidavit is not made in that way. The motion made by Manager Porter is supported by that affidavit. If that is so we are ready. But if you have any other proof outside of that we insist that you file it at the same time.

Mr. ESTABROOK. We have the return of the officer.

Mr. REDICK. Well, file that.

Mr. ESTABROOK. We have the file of witnesses.

Mr. REDICK. That we shall object to. We object to persons testifying verbally. When we see all they have to show upon paper, then we are in a condition to say whether we can contradict upon a cross-affidavit. But we can not file a cross-affidavit upon a verbal statement. And I trust honorable Senators will hold us on both sides, and make us commit all to writing. You have the trial before you; the motion for a continuance, and the affidavit supporting, and the cross-affidavit contradicting; and you then say who has the credit. As Mr. Marquette says, this is no time to ask for a continuance, and we protest.

And all we ask is so that we may have a fair hearing; and that these gentlemen put these things in writing. Then we are ready to discuss this question of continuance. If they can draw in David Butler in this thing, I want to see it on paper.

Manager PORTER. Mr. President: In the question we are now discussing I believe the Managers understand perfectly well that in an ordinary case, where an application for continuance is made, it is supported by an affidavit. If a reason is asked, we answer by reason of the absence of certain witnesses it is necessary we should prove what is to be testified to by them, and that we should have them before we can proceed to trial. The only question is, is this one of those cases where we shall be required to do this? We filed our application for a continuance before the question was brought up in the respondent's answer. The ground we took then was that this whole question was before this court. They were as well acquainted with the facts as we. The return of the officers shows that we have used proper diligence in issuing orders for witnesses. And when their names are called we find some ten very important witnesses are absent. And we could shortly make an affidavit setting forth who are absent, and what we expect to prove by them. If it will relieve the gentleman we can do it.

Mr. MARQUETTE. If there is any truth in that charge let it be met, placed here in black and white, that we may meet it fairly and squarely. I have no doubt we will prove it is false, as the statement made yesterday, that the Governor used profane language in the opening of the House. We do not cast implication upon the Managers. Probably they think they

are doing their duty, but we want it placed in that kind of manner, and when so placed we are ready to meet it. Here they get up and make a speech, and charge that such and such is done. I have this to say, that the men who can be bought to run away, can be bought to say anything against Governor Butler. But I hardly think this. McBride, according to their showing, is without the jurisdiction of this Court. If they get a continuance they could not get him here. This State has no power beyond her boundary. She is sworn in that boundary, and within it only has she control. But it does look to me a little like as if it was on the other hand—he is said to be on a tour—it looks to me very much as though this man, like many others, can say something in the dark, and behind Governor Butler's back, that he dare not say to his face; and that this tour around to see his friends is because now he is called on to face the music. Hence we simply ask that this be placed fairly in black and white like motions are generally made for a continuance, so that we may have an opportunity to meet it. I do not know but what we are prepared to meet this affidavit now. I have not examined it.

Senator THOMAS. Mr. President, I desire to present the following order.

*Ordered.* That if the Managers desire to apply for a continuance, they do so in the manner prescribed by law for application for continuance in Courts of Record.

The PRESIDENT. The question is upon the adoption of the order. [Upon the clerk calling the names of the Senators, the order was unanimously adopted.]

Mr. ESTABROOK. Mr. President, we are not ready on the instant, to fill

all the papers in form. It will take at least a few minutes to make up the necessary papers. I ask that the Court take a recess for half an hour.

The PRESIDENT. Will some member of the Senate make a motion to that effect?

Senator GERRARD. I move that the Senate sitting as a Court of Impeachment do now adjourn until 2 o'clock this afternoon to allow the Managers time to prepare their affidavits.

Senator HASCALL. Do they desire that length of time?

Mr. ESTABROOK. We prefer that length of time.

Mr. MARQUETTE. I ask that the Managers file their affidavits by half past twelve, so that we may have time to examine them before the meeting of the Senate.

Mr. ESTABROOK. We will do so.

The motion for adjournment was now put and carried.

#### AFTERNOON SESSION.

2:15 P. M. Senate called to order by the President. Present, all the Senators, the Managers and their counsel, and the Governor and his counsel.

Manager MYERS. Mr. President, When the roll of witnesses was called this morning C. S. Chase was absent. I desire to say that he had leave of absence from the Board of Managers. He has now returned.

The PRESIDENT. Gentlemen, the question is on the motion of the Managers for a continuance of sixty days. Have the Managers anything further to offer?

Mr. ESTABROOK. Mr. President, I am directed on the part of the Managers to say that, if it is agreeable to the respondent, we will comply with the general rules for filing affidavits,

by simply reading them without argument. What do you say?

Mr. REDICK. We think the matter of too great importance to pass it without argument.

Mr. MARQUETTE. We claim that the affidavit would be insufficient in a court of law, and we desire to state our views why it is.

Mr. ESTABROOK. I proposed to submit this point without argument at all, but I will read it, and simply make a few remarks.

"In the matter of the impeachment of David Butler, Governor of Nebraska. And now comes J. C. Myers, chairman of the Board of Managers herein, and being duly sworn, says that the said Board cannot now safely proceed to the trial of this cause for the reason of the absence of one M. J. McBird, who is a material witness herein. And he further saith that he expects to prove by said witness the facts set forth in the first and second specifications of article two of the articles of impeachment filed herein. And he further saith that said McBird is a resident of Council Bluffs, Iowa, that he came willingly before the Joint investigating Committee of the Legislative Assembly and gave his testimony in substance as hereinabove stated, and as this affiant is informed and believes, he gave assurance that he would come to the city of Lincoln and repeat said testimony whenever he should be thereunto requested. That the Sergeant-at-Arms of this Senate called at his the said McBird's house with the subpoena of this Senate and found said McBird absent from from home. That according to the promise and assurance given by the said McBird he has reason to, and does expect and believe that if a continuance be had for sixty days, the said Board of Managers will be able to procure said witness in time to be used at said trial. And said affidavit further saith, that one Robert D. Silver is an important witness, without whose testimony the Managers cannot now safely proceed to the trial of this cause. And he further saith that he expects to

prove by said witness, the facts set forth and contained in Article 2, specification 3d, of Articles of Impeachment filed herein. That said Silver is a resident of the city of Lincoln in this State, but, as this affiant has been informed and believes, is detained away by the sickness of his father in the city of St. Louis. That a subpoena has been issued for said witness, and the same has been served by leaving a copy of the same at his place of residence, and that the same could not be served personally by reason of the absence of said Silver. And this affiant says that if a continuance of this cause be had for sixty days, that the Managers will be able to procure his testimony in time for this trial; and further he saith not.

[Signed.] JOHN C. MYERS.

Sworn to and subscribed to in my presence this 17th day of March, 1871.

E. E. CUNNINGHAM.

President of the Senate.

And, beside that, gentlemen, I will refer you to the affidavit already filed, and to the return that was made by the Sergeant-at-Arms, which is on file, and forms a part of the affidavit of the Hon. Managers. So much for the affidavits. Now, I will simply state in regard to compliance to the rules I hardly know to what that may refer. There is nothing that relates to criminal causes at all. The Judge in his rules, generally requires certain things to be stated. Because, in civil cases, a continuance may be had by either party at the first term. The gentleman shakes his head; he thinks that is not the rule, but I will show him that it is. And at the second term the courts require affidavits. This is in regard to the continuance in criminal cases. There is no rule whatever, and each court determines rules to suit itself. Our Court in the Second Judicial District, provides that a motion shall not be argued. It has laid down a rule to that effect. But in all cases, whether it be in our

statutes or otherwise, in every case brought into court at the first term of the Court, the term at which process is returnable, with a less amount of evidence to induce the court to grant a continuance, is rendered necessary. That, I say, gentlemen, is the rule in ordinary cases before local tribunals. We, in ordinary criminal cases, brought, for instance, in the county of Lancaster, before the District Court, if it should be known that by using reasonable diligence, even where the offense was committed in the county, and where the indictment was to be tried; reasonable diligence has been used and they have failed, the court will always grant a continuance to the party making the application. In this case, we come here, and it may be emphatically said this is the return day of the process of this Court. And it is only three or four days after the day that they fixed when the process should be returned. That being the case, then, in a local tribunal, to give the parties an opportunity to make out the case upon one side or the other, it should be more emphatically so in a case like this, where parties are required to send to different portions of the State, into the different counties of the State, and even across the line, to get witnesses here to make their statements good. I certainly think no argument is necessary to satisfy this tribunal that upon such a showing as this, this case, at this time, under these circumstances, there should be no hesitation in granting this continuance. Section 325 of article 8 of the Revised Statutes says:

"In any civil action wherein the defendant shall answer or demur on or before the first day of the term next succeeding the service of process, such first term shall be the appearance term, and such cause shall be continued, on the application of either

party, to the next term, at which time the same shall be tried, unless for good cause the court shall continue the same."

Mr. REDICK. Mr. President and gentlemen, the law he has just read has been repealed for the past three or four years, and perhaps six. That statute is never used in a court. I do not know what Judge Mason would say.

Mr. ESTABROOK. The statute was enacted in 1866.

Mr. REDICK. I do not think Mr. Estabrook claims that he practices sufficiently in our courts to make himself thoroughly acquainted with our rules of practice. The practice is that when a case is brought into the District Court, it is brought in and put upon the calendar and numbered for trial, if the plaintiff shows he has good reason for a continuance by an affidavit, if it is demanded by the other side, and the rule is if he makes it he must follow the statute. That is the practice on our side of the river; I am not familiar with the practice in Judge Mason's court. Permit me to say, gentlemen, that this question of adjournment is almost as vital as the main case to my client. This sixty days continuance is almost as bad as a conviction. He don't want to be suspended from office for sixty days. Ever since the commencement of this trial we have argued against continuance. Now why do they ask for continuance? Why to secure the witnesses, Silver and McBird? Why this man McBird is out of the jurisdiction of this Court? I read from the affidavit of Manager Myers.

"Said McBird is a resident of Council Bluffs, Iowa, that he came willingly before the Joint Committee of this Legislative Assembly, and gave his testimony in substance, as hereinabove stated."

He says he came before the committee willingly. Now I know this to be a mistake. I was informed by Elam Clark, who was one of the committee, that McBird was brought before a "Railroad" Committee, and after his attendance had been secured in this way, his testimony was taken. He said he would not come to Lincoln, and they do not pretend to say that he will come, but they *believe* he will come. As far as this man McBird is concerned, I say it is useless to grant a continuance, for McBird has said he don't want to come to Lincoln—that he will not come to Lincoln, and he is beyond the jurisdiction of the Court. I read again from the affidavit:

"And as this affiant is informed and believes, he gave assurance that he would come to the city of Lincoln and repeat said testimony whenever he should be thereunto required; that the Sergeant-at-Arms of this Senate called at his, the said McBird's house with the subpoena of this House, and found said McBird absent from home; that according to the promise and assurance given by said McBird, he has reason to, and does expect and believe that if a continuance be had for sixty days the said Board of Managers will be able to procure said witness in time to be used at said trial."

Is not this statement contradicted by the facts? McBird has taken himself away, thus showing that he does not want to appear before this court, and there is no reason to believe that he will come here in sixty days. Now we come down to Silver. He says R. D. Silver is an important witness, and he expects to prove by said Silver:

"The facts set forth, and contained in Article two, specification three, of the Articles of Impeachment filed herein. That said Silver is a resident of the city of Lincoln, in this State, but as this affiant has been informed and believes is detained away by the sickness of his father in St. Louis."

How different that sounds from the speeches they made here yesterday and day before. Then they claimed that Governor Butler had spirited away these witnesses, but when the honorable Manager comes to put this statement on paper and swear to it, he draws back, and substitutes another, to the effect that R. D. Silver is at St. Louis, having been called there by the sickness of his father. That is the substance of the affidavit on the subject of these two witnesses. The affidavit is defective. It must appear on an affidavit asking for a continuance on account of the absence of material witnesses, that you know of no other witnesses by whom these facts can be proved. But here is a document which should be learned by every little girl, and played upon the piano. This is what my friend Estabrook has to say in his affidavit. He says:

"When I called at the office of McBird, I found there one — Fletcher, who informed this affiant that he was a joint occupant of said office with said McBird, each paying one-half the rent."

Now, that is an important item. It is of the utmost importance that we should be told that Fletcher and McBird occupy an office together, and that each one pays half the rent. I read again from Estabrook's affidavit:

"That said McBird left Council Bluffs on the 3d day of March, 1871; that he requested him, the said Fletcher, to say nothing about his, the said McBird's, departure; that he did not know where said McBird had gone, nor when he would return; that, during the conversation with this said affiant, said Fletcher made the remark, in substance, that he guessed he, the said McBird had got even with the Governor of Nebraska."

"Made the remark in substance." Now, why not say just what Fletcher did say?



"That, in conclusion of the conversation, he, this affiant, asked said Fletcher if he did not know that said McBird had gone away to avoid being a witness in this case? And that after some hesitation the said Fletcher replied that he had rather not answer the question; that he had promised to say nothing; that he was sorry he had told anything, and that if he were under oath he would be compelled to tell all he knew."

Why, I have no doubt in God's world that he went away to avoid being a witness in this case. For if he should come here and tell the whole truth you would find that he and Silver have got this money instead of Governor Butler. I state this because I know we could prove it.

"And this affiant further saith, that from the office of said Fletcher and McBird, he went directly to the residence of said McBird."

Following this up, looking up testimony here, and cross-examining the witness before he comes on the stand.

"That he there met a lady who declared herself to be the wife of the said McBird."

How did she come to "declare" herself the wife of McBird? Why did that lady say "I am a married woman?" He don't say what he had said to that lady in the absence of her husband that made it necessary for her to protect herself by this declaration, but there he stops.

"That in response to the inquiries of this affiant, said Mrs. McBird informed this affiant that said McBird went away on Friday, the 3d inst.; that on leaving he had told her not to be alarmed if she did not hear from him for a month or more; that she had not heard from him since, and did not know where he was; that he had told her he might visit Texas before he returned; and she farther stated, that Mr. Silver was there and left with him, the said McBird."

Ah, Senators, what was Silver doing up there? The honorable Man-

ager in his affidavit says he has gone to St. Louis on account of the sickness of his father. The truth is, that he went to Council Bluffs and run off his partner. Silver is the man who has got this money, as we will prove before you are through. But it is not for us to show whether this is true or not, because it has been said he has been seen here since McBird left. Gentlemen, what is the object of this motion? Here is Governor Butler out of office, and will have to remain so until this trial is concluded, and now if you adjourn sixty days, it is probable you will not get a quorum again, and so keep him out of his office during the entire term for which he has been elected—just what those persons whom we claim have conspired against him, designed. We want a speedy and fair trial, and we shall insist upon that as long as this Senate is open to hear us. All that we insist upon is a trial now, or as soon as we can get it; two or three days delay will make no difference, but, give us a trial as guaranteed to us by the Constitution and the law, and let Governor Butler have a chance for his life, and not disgrace him forever without any chance to vindicate his character before the people.

Mr. MARQUETTE. I doubt very much whether this body will hold that continuance can be had without a showing, such as is required in our Courts; but if they should hold that it could, we will simply say there is one at least fatal error in that affidavit, and that is this: That it must appear by that affidavit that there is no other witness within reach of this Court by which these same facts can be proved. If it come under the head claimed by the counsel on the other side—criminal—there is no power by which you can take a deposition of the witness,

and if he is beyond the power of this Court, and has absented himself for the sole reason of getting away, then at the end of sixty days you cannot get him, no more than you could now, unless he comes at his own will. He will probably refuse at the end of sixty days, the same as he does now, and I do not see that we would gain anything by this. I suppose that both parties of witnesses have been summoned here, coming perhaps a hundred miles, and at great expense, and I think it is the duty of this Court to proceed immediately in trying this cause. I am satisfied myself that the statute in reference to appearance term has been repealed. But I shall not claim it, as I cannot find the statute.

Mr. ESTABROOK. Mr. Redick can find it, because he has much more practice than I have.

Mr. MARQUETTE. It has been held that the first term was not an appearance term; that it was set down for trial. I think, in this case, by your rule, that the prosecution is right. Commence and continue from day to day until this trial is over, and with that rule I think the trial ought to be conducted. We ask this thing in good faith. We have no doubt the Managers may not think this necessary, but we think substantial justice requires that this case now proceed.

Manager MYERS. Mr. President, and Senators: I wish to say a few words as to the propriety of granting our request for a continuation. We make our request on the ground that important witnesses are absent; witnesses that will prove, if they are here, certain facts of which they have only themselves personal knowledge. If we had other persons who could swear to those facts; if other persons to these transactions had been adun-

ted to the august presence of Governor Butler, when these occurrences took place in his private apartment,—we would have no difficulty in getting the proper witnesses before this Court. McBird was one of the Governor's particular confidants; he was the architect of the University—the recipient of his favors; and it would be doing injustice to the Governor's sagacity for any one to suppose that when these things were transpiring he would admit a host of witnesses into his presence. We made every effort in our power to secure his presence here, both by summons and attachment. We regarded this case as important, and recognizing that importance, resorted to extraordinary efforts to endeavor and have him here. He did go to the city of Omaha, and offer his testimony before that Investigating Committee of his own free will and accord. We had no power to drive him from Council Bluffs. He came before the railroad committee and offered his evidence without compulsion or process. We could not reach him. He was a resident of Iowa. He waited for the appearance of that Committee. While we were making these exertions to get this man here, the other side were equally as anxious to get him away from this court, its officers, or its process. An individual, cheek by jowl to the Governor,—holding a prominent position here as contractor, and subject to his control, and willing to perform any friendly service, made his appearance at Council Bluffs on that day. They sent Mr. Stout, or somebody sent him, or somebody, to us unknown, sent him there, and he went on that mission, and on the very day McBird disappeared, Stout was there himself. And now he is away from the jurisdiction of this court. If Mr. Stout was here, as his duties re-

quire him, to attend to his penitentiary affairs; to attend and vindicate the State and the Governor from these charges; but he, too, has gone, so we are obliged to ask for a continuance in order that we may prove our allegations when they are here. If we can get them, we will have them, here; and then be able to judge whether their testimony is reliable or not; not by pre-judging them. They are not on trial here. We are made to believe that they are the criminals before the bar of this Senate, when it is unnecessary for me to say who is the real criminal here. If every witness is to be accused by the counsel, I ask is that the way justice is to be administered here, by denouncing the witnesses of the prosecution? Is every witness we propose to bring here, to be denounced in advance as a scoundrel, not to be believed on oath? Now, Mr. President, we ask this in good faith. We do not propose to carry on this case in the absence of necessary and important witnesses, which we have reason to believe are carried away by a pre-concerted action on the part of the accused. Therefore, in order to have an opportunity to get them here, we ask a continuance of sixty days, and I pledge myself, on the part of my fellow Managers, to go on without them if we do not secure these witnesses by that time. But we are satisfied that if they were here we could prove every one of these allegations.

Senator THOMAS. I move the Senate adjourn to consider the order for sixty day's continuance.

Mr. REDICK. I wish to inform Mr. Estabrook that I find the law which I stated to him just now has been repealed.

The PRESIDENT now put the motion to retire for consultation, which was carried.

After a short absence the Senate returned to the senate chamber.

The PRESIDENT. The Senate will come to order. Gentlemen: The Senate have had under consideration the motion of the Managers for a continuance of sixty days, and have adopted the following order:

"Ordered. That the application for a continuance filed by the Managers, be and the same is hereby overruled."

Manager DOOM. I wish to state that as we are forced into this trial, I have one favor to ask of the President; if, during the trial, a material witness is absent, we will ask for a short adjournment in order to get him.

The PRESIDENT. Unless there is some order adopted by the Senate the trial will proceed.

Mr. ESTABROOK. I ask that *aliases* be served upon witnesses that have not yet been found, and an attachment be served upon witnesses who have not answered their summons, and I ask for an adjournment until to-morrow.

Mr. MARQUETTE. There are several witnesses who are complaining about their being detained here without being examined. I think we should proceed without further delay.

Senator THOMAS. I would like to know if the Managers desire an adjournment? If so, they should put the motion in writing. There may be witnesses here in town who are ready to appear.

The PRESIDENT. Any motion the counsel require, they will reduce to writing.

Mr. ESTABROOK. I wish to have the names of witnesses again called, and proclamation made that those answering shall be present to-morrow morning.

**Mr. MARQUETTE.** I would like to ask if the Managers propose making an opening address? If so, they might proceed with that. I understand that they have the privilege to do so.

**Mr. ESTABROOK.** We are, of course, expecting to address the court; but the chairman of the Board of Managers is not prepared to open just now. His references, authorities, &c., are not in shape to be used just now. Everything will be in readiness to move right along to-morrow morning. I would ask, or if the President deems it necessary, have some member put the motion in writing, that the Senate adjourn until to-morrow morning.

**Senator TENNANT.** I move the Senate, sitting as a Court of Impeachment, adjourn.

**Senator THOMAS.** I suggest that the Senator fix the hour of 9 o'clock to-morrow morning.

The amendment was accepted, and the President adjourned the Senate.

#### **Fifth Day's Proceedings.**

**SATURDAY—9 A. M.**

Senate called to order. Prayer by the chaplain.

**The PRESIDENT.** The hour having arrived fixed by the Senate sitting as a Court of Impeachment for the trial of David Butler, Governor of the State of Nebraska, the Sergeant-at-Arms will make the usual proclamation. (Proclamation made.)

**The PRESIDENT.** The Secretary will call the roll of the Senate.

**Present.**—Senators Brown, Cropsey, Hawke, Hascall, Hilton, Metz, Sheldon, Thomas, Tucker, Tennant and Mr. President. **Absent,** Senators Gerrard and Kennedy.

The Journal of yesterday was read and approved.

**The PRESIDENT.** Gentlemen Managers, the Senate sitting as a Court of Impeachment for the trial of David Butler, Governor of Nebraska, is ready to hear you in the presenting of this case. You may now proceed.

**Manager HUDSON.** Mr. President, I suggest that one of the Senators is not yet in his seat, and it is not proper to proceed.

**The PRESIDENT.** The chair is of the opinion that it is not requisite that all the Senators should be present and in their seats.

**Manager MYERS.** Mr. President and gentlemen of the Senate, I have been deputized by the Managers in this case, to appear before you in support of the articles of impeachment that have been preferred against David Butler, Governor of the State of Nebraska. I have accepted this duty with a doubt of my ability to do justice, not only to the prosecution of this case, but also to those who have conferred this responsible position upon me, and I am impressed with the importance of the case and the overwhelming results to come from its final hearing. But not wishing to retire from a case that requires the assistance of the ablest minds, although surprised that it should have been put on me by the House of Representatives, I did not consider myself justified in avoiding any of the responsibilities of the case. It is certainly a strange and remarkable circumstance that Nebraska should, among all the States of the Union, be the first to present her Governor before an impeachment Court for embezzlement of public funds. I know of only one case in the history of any foreign country with which we are familiar, and that is Warren Hastings, the Governor-General of India, who was brought before the Impeachment Court of

England some eighty or ninety years ago. In that case an officer was charged with high crimes and misdemeanors, who had been commissioned by the Crown of England as Governor-General of her vast possessions in India. He was clothed with unlimited power; sent as the representative of the power of Great Britain in the person of one of her purest, one of her ablest, and one of the noblest representatives of English nobility. He was sent there to impress the unchristianized heathen with the majesty and power of the Crown of England, and to assert her dominion over some sixty millions of people. A man thus distinguished; a man placed in that position of human grandeur, it was to be supposed, would be above the ordinary seductions of life; that a man having the destiny of a vast empire placed within his control, that covetousness would be the last vice that would attract him from his high position. And, although after a long and tedious trial of seven years, in which names appear that are now immortal; in which the name of Hastings has gone down disgraced; in which the name of Burke appears as a name that has not been excelled by ancient orators, as Demosthenes—and has only been equalled by Webster in our own country—while that name towers as a monument of human greatness, an achievement of mental power, the memory of Warren Hastings lives only in the hate of mankind. And in the case of Francis Bacon, whose name has rolled around the world as one who stands eminent in human knowledge—that man who stood at the head of the jurisprudence of the world; who, as a philosopher, was further advanced than any of the ancients conspicuous upon the pages

of history—that name, although immortal, is covered with everlasting disgrace. I think, gentlemen Senators, having these examples before us in the history of European nations, it is not a singular fact that the State of Nebraska, pure and undefiled as God made her; an infant in the sisterhood of States; should, in the early progress of her career, be compelled to institute articles of impeachment against her Governor, for the same reasons which expelled Hastings from India, and which sent her great legal and moral luminary to the tower. Is it not a remarkable fact that, a State which springs almost from the bosom of the Creator pure as an infant on its mother's breast, should, in this early stage of its life, hand down its name to posterity, which few of us will regard with pride. I sincerely hope that these charges may prove to be untrue; that it may be shown that these allegations against the ruler of this State are not true; that the facts are not as represented; that the Governor stands here, an injured man. Mr. President, I had drawn a parallel between the Governor of this State in relation to the articles of impeachment, as bearing strong similarity to the same charges preferred against Sir Francis Bacon—a man that was noted for possessing all the strength of intellect God ever bestowed upon a human being; who was pronounced by Byron to be the greatest, and it must be confessed, the meanest man who ever lived. I will request my friend, Manager Hudson, to read from page 764 of the Hubbell trial the confession of Sir Francis Bacon:

(Manager Hudson reads.)

"To the first article of the charge, viz: In the cause between Sir Rowland Egerton and Edward Egerton,

the Lord Chancellor received £300 on the part of Sir Rowland Egerton, before he had decreed the cause. I do confess and declare that upon a reference from his majesty of all suits and controversies between Sir Rowland Egerton and Edward Egerton, both parties submitted themselves to my award by recognizances reciprocal in 10,000 marks apiece. Thereupon, after divers hearings, I made my award with the advice and consent of my Lord Hobart. The award was perfected, and published to the parties which was in February. Then some days after, £300, mentioned in the charge, were delivered unto me." Again, the second article of the charge, viz: 'In the same cause, he received from Edward Egerton £400.' "I confess and declare, that soon after my first coming to the seal, being a time when I was presented by many, the £400 mentioned in said charges was delivered unto me in a purse, and as I now call to mind from Edward Egerton, but as far as I can remember, it was expressed by them that brought it, to be for favors past, and not in respect of favors to come." Again, the third article of the charge, viz: In the case between Hody & Hody, he received a dozen buttons of the value of £50, about a fortnight after the cause was ruled.' "I confess and declare that as it is laid in the charge above, about a fortnight after the case was ended, it being a suit for a great inheritance, there were gold buttons, about the value of £50 as is mentioned in the charge presented to me, as I remember by Sir Thomas Perrot, and the party himself." So of the fifth article against him:—"To the fifth article of the charge, viz: 'In Sir Thomas Monk's causes, he received from Sir Thomas Monk, by the hands of Sir Henry Holmes, £110, but this was three-quarters of a year after this suit was ended.' I confess it to be true that I received 100 pieces, but it was long after the suit ended, as is contained in the charges." And so of the seventh article against him: "To the seventh article of the charges, viz: 'In the cause between Holman and Young he received of Young £100 after the decree made for him.' "I confess and declare, that as I remember, and good while after the cause

ended, I received £100, either by Mr. Tobey Mathew or from Young, himself. Again: To the eighth article of the charge, "In the cause between Fisher and Wrenham, the Lord Chancellor, after the decree passed, received a suit of hangings, worth £160 and better, which Fisher gave him by advice of Mr. Shute." "I confess and declare, that some time after the decree passed, I being at that upon remove to York-house, I did receive a suit of hangings of the value, I think, mentioned in the charge by Mr. Shute, as from Mr. Edward Fisher, towards furnishing of my house as some others that were in no way suitors, did present me with the like about that time."

Had Sir Francis gone down into the depths of infamy, on the charge of having interfered with the rights of his fellow-citizens, so far as the administration of justice was concerned; had he been incapable, or a victim to drunkenness, or insanity, the world would have hid its eyes, and looked upon his actions with charity. But Sir Francis Bacon went to the lowest depths for trampling upon the laws of honor and of duty committed to his keeping in the position he occupied. He fell a victim to his love for the almighty dollar. It was the same seductive power which laid David Butler in the dust. It was the almighty dollar, gentlemen, for which David Butler grasped, as we shall endeavor to show here, by undoubted proof; such as will convince the people of Nebraska that they have been betrayed by a man whom they once loved; by one they once esteemed; the man who reported in his message to the Legislature, that there was \$77,000 in the State Treasury, yet there was not found a single dollar in our coffers. But I drop the parallel I have been drawing between Francis Bacon and David Butler. David Butler is arraigned before this Senate to be tried on the merits of the

case. We do not ask you to accept as final the articles and specifications which have been prepared against him by the House of Representatives. Rather would we hold before you the scales of justice equally poised. And if we do not prove every one of the allegations, it will be because the witnesses who are cognizant of the facts are beyond the jurisdiction of this Court. It is true, we believe, that for years there has been a settled plan on the part of David Butler to demand money from every man who has been employed in doing work for the State public buildings. We shall present evidence here to substantiate these and other material allegations. Now, in reference to the first article, to which I will call the attention of the Senate; in reference to the school fund, we may have a few observations to make. It appears that the Government of the United States had opened its purse and been very liberal in assisting in the building up of the interest of new States; and so profuse and lavish in fostering her educational interests that she has set apart a certain amount received from the sales of public lands, for the use and benefit of the people of those States. It would seem that previous to the admission of this State into the Union an act was passed granting Nebraska five per cent. of the proceeds of the sales of the public lands of the United States, within the State of Nebraska. This amounted to \$16,881.26. The Legislature by joint resolution authorized the Governor to secure the same, to be paid over to the Treasurer of the State at as early a day as possible. He proceeded to the city of Washington and procured the amount audited to be paid over to him, by a warrant issued for the same, payable to the order of David Butler. I believe that

warrant was brought to Omaha by one E. B. Taylor, and deposited in the First National Bank of that city, subject to the order of David Butler, Governor of Nebraska. It remained in that institution for a short time, when the Governor took steps to get it into his possession, and gave a power of attorney to Nelson C. Brock to endorse the warrant and draw the money on it, and that Mr. Brock obtained the money and brought it to Lincoln and deposited it in the banking house account, subject to the order of David Butler. And it is here for the first time that an agent appears in this matter, who charges \$300 for the carrying of this money from Omaha to Lincoln. And David Butler secured three certificates of deposit at interest, and took out \$15,000 of the amount, leaving the remainder there to the credit of David Butler, individually, as it is clearly shown on the books of the bank, and they cannot lie. He had no more right than you or I to hold that money in his possession a moment, but it was his duty to pay it promptly into the State Treasury. He had some object in depositing that money in the bank; what was it? If he had put this money into the Treasury, it would have been beyond his reach, for he would have been restrained from taking it out of the Treasury on his own checks or warrants. So he took very good care not to have it deposited in the Treasury. Now, after having this money for some time, it occurred to the Governor to get up a kind of security and convert it into a loan. He had mortgages on lands up in Pawnee county made out to himself and from himself as security to the State. So that the Governor had both the mortgages and the money in his possession and there was no way to get them out.

We will now turn to the McBird case, a case certainly atrocious in all of its acts. I will just read article 2d, referring to this matter:

ART. II. That said David Butler, Governor of the State of Nebraska, in the exercise of the powers and prerogatives conferred upon and belonging to him by law as such Governor, has corruptly and unlawfully used and offered and attempted to use such official powers and prerogatives, and corruptly and unlawfully refused to perform his duties as such Governor, for the purpose and object and with the intent of securing to himself profits, gain and emolument, and with intent to extort money or advantage from persons having claims against the State, or seeking some office, or privilege under the laws thereof.

The second specification under that article reads as follows:

SPECIFICATION 2d. That the said David Butler, Governor of the State of Nebraska, being such Commissioner and having such authority as set forth in the last above specification: The said M. J. McBird mentioned therein, presented to the said Governor at Lincoln, in said State of Nebraska, in the month of November, A. D. 1869, another demand and claim for additional services as architect in and about the making of plans and specifications for and superintending the erection of the aforesaid State University building, and thereupon the said David Butler, did then and there, scandalously and corruptly agree with the said McBird in substance and to the effect that the said Butler, as Governor as aforesaid, would allow the said McBird's claim and demand at the sum of one thousand and eight hundred and twenty-eight dollars and twenty-six cents, and that the said McBird would in consideration thereof pay to him, the said David Butler, one-half thereof, and thereupon the said David Butler, Governor, as aforesaid, did allow such claim and demand at said sum, and procure and cause to be issued thereupon two warrants upon the Treasurer of the State of Nebraska, each for the sum of nine hundred and fourteen dollars and thirteen cents, and then and there in pur-

suance of the said scandalous and corrupt agreement, the said McBird endorsed and delivered one of the said warrants to said David Butler, who received and kept the same.

Now, gentlemen, here is a case, where Governor Butler accepts money that didn't belong to him, of McBird, and he conspired with McBird to make a fictitious claim, and to divide the spoil with him. But we shall dismiss this McBird case, the only evidence, if that individual were here, by which we would be able to prove this startling state of facts. I recur now to the case of R. D. Silver, an individual, whose reputation I believe, in this State, stands before the people pure and untarnished, with no stigma upon his character, and nothing will be admitted to the contrary unless satisfactory investigation prove it. The following is the statement of Mr. Silver, as contained in this third specification of this article. Mr. Silver had a claim to the amount of \$13,000 or \$14,000, and he was unable to get that money from the grasp of Butler unless he would come down with a consideration for doing so, and it is a singular fact that the Governor's demands were nearly equal to the sum total of Silver's claim:

"In his private office, David Butler, asked R. D. Silver if he was not going 'to do something for him;' he thought he ought to give him \$10,000; and refused to settle the accounts of Silver until Silver acquiesced in the demand thus made."

The Governor wanted to have \$10,000 out of the \$14,000 or \$15,000 that remained to the credit of Silver upon this contract; and somebody else said to him—

"You have promised to give the Governor \$10,000 of what remains in the treasury as a bonus by virtue of previous agreement; what would you give me?"



It would seem there were other parties interested in these demands upon Silver; and as an agreement had been made to pay the Governor that amount, the other party demanded \$3,000 as his share of the fund. Showing that there was a conspiracy of individuals in the town of Lincoln, not only to rob the treasury, but the people who had claims upon the treasury upon other contracts, and that no man who complied with his contracts as he was bound to do, could get a dollar of his just dues until he relinquished a portion of it to the officials; more than an ordinary individual would consider enough to build up a half dozen farms; unless he complies with the demands of the Governor he could not release or cancel his bond; he could not sever himself from the State. Now, this is certainly a remarkable position for a Governor of a State to be in. It is certainly, I think, Senators, a humiliating position for a Governor to be in who has been clothed with executive power by the vote of the people. It would certainly be repulsive to the honest feelings of the people who have given their confidence to the Governor and who rallied around him, that he should thus show his ingratitude, the worst feature in human character, to the people of this State, who covered him with the panoply of their power. That he should sit in his office like a grasping spider, spinning his web around everything that would approach, dragging his victims into the dark corner of the cell, and feeling into their pockets and saying "how much money have you here; how much can I get on this contract?" A most humiliating attribute, and he should feel it in his inmost heart. Everything he has touched within the past three years of his political exist-

ence seems to be tarnished with that same hankering after money. He could not make a contract with an individual for a book, or for a pen, for a building, or for a single stone or pebble, unless he would have its beauty destroy its value if he had not a share of it. He would have taken the beautiful Koh-i-noor, that is admired by the world, and in order that he might satisfy himself, would have broken it to pieces that he might have a piece of it. He would have destroyed the temple in order that he might have the gratification of seeing it destroyed, if he could lay hold of a share of the ruins. I cannot see how a man who has the common attributes of human beings should have allowed himself to become the victim of this passion. It has been said that "money is the root of all evil;" surely that has been true as to Gov. Butler. It has tarnished the fair fame of our beautiful State. These things have been known to be in existence for years and years; his friends informed him that there were suspicions of his conduct in his official position; they were willing to admit that he had shown diligence; that he was a man of the people; but they notified him to beware of the seductions of money; that he should not fall a victim to the artifices of those who surrounded him; but that he should stand up as a barrier to the encroachments that forced themselves upon him in his position as Governor. I call the attention of the Senators to the acts of the Assembly, page 214. It does not appear upon the records of any other State in this Union. I have no doubt these people who assembled in the Capital in 1869 were aware of these extraordinary facts, and they notified the Governor to stand off. I read from

section 103, page 214, of our State Laws of 1869.

"If any County Treasurer or other officer or person charged with the collection, receipt, safe keeping, transfer or disbursement of the public money, or any part thereof, belonging to the State or any county, precinct, district, city, town or school district in this State, shall convert to his own use or to the use of any other person or persons, body corporate, association or party whatever, in any way whatever, or shall use by any way of investment on any kind of security, stocks, loan, property, land or merchandize, or in any other manner or form whatever; or shall loan with or without interest, to any company, corporation, association, or individual, any portion of the public money or other funds, property, bonds, securities, assets, or effects of any kind received, collected, or held by him for safe keeping, transfer or disbursement, or in any other way or manner, or for any purpose; or if any person shall advise, aid, or in any manner participate in such act, every such act shall be deemed and held in law to be an embezzlement of so much of said monies or other property as aforesaid as shall be thus converted, used, invested, loaned, deposited, or paid out as aforesaid, which is hereby declared to be a high crime and misdemeanor, and upon prosecution, trial by indictment, and conviction thereof, before any court of competent jurisdiction in this State, such County Treasurer, or other officer or person, shall be submitted to imprisonment in the Penitentiary, and kept at hard labor for a term of not less than one year, or not more than twenty-one years, according to the magnitude of the embezzlement, and also to pay a fine equal to double the amount of money or other property so embezzled as aforesaid; which fine shall operate as a judgment at law on all the estate of the party so convicted and sentenced, and shall be enforced by execution or other process, for the use only of the party or parties whose money or other funds, property, bonds, or securities, assets, or effects of any kind as aforesaid have been so embezzled; and in all cases such fine, so operating as a judgment, shall only be

released or entered as satisfied by the party or parties in interest as aforesaid."

Now, if it please the Senate, we shall say in this connection, we have no desire to pursue the Governor to the extent contemplated in this act of the Legislature. We have no desire to do more than to remove him from office. The punishment that is provided in the Constitution is plainly stated; hence the Governor was admonished by this act not to place himself in the power of the law, but to protect and uphold its interests. He was to guard the interests of the State from the attacks of robbers, of whom he has shown himself the Prince. Now we will show how the Governor has disposed of himself in connection with the other affairs of the State. The University of the State of Nebraska is richly endowed, and the Governor of the State, by virtue of his office, is at the head of the institution. There are a great many nice positions connected with the University; hence the Governor is frequently approached upon the subject of making appointments: "Sir, I desire to make myself of use to the State, and, believing myself capable, would like the position of Treasurer of the State University." Well, instead of saying, "If you are capable of discharging the duties, you shall have the place," he says "How much will you give me to use my influence to get this place? It is within my control, as I am President of the Board of Regents, but I must have something for myself before I can procure you the place." "Well, will you take \$750 to secure the place for me?" Now, gentlemen of the Senate, I ask, is it not disgraceful that the Executive of our State should take upon himself the business of an auctioneer, and dis-

pose of the offices and positions in his control, to the highest bidder? I know that offices and commissions have been sold to the highest bidder, but this is in England, and are we to recognize that principle in the State of Nebraska? Is that to become a part of the perquisites of our Executives? Are we to put it upon record that these offices are only to be given as bribes? Are we to permit the Governor of this great State to put upon the auction block its offices, honors, and its highest places? Yet here is Nelson C. Brock, who offers the sum of \$750 to Governor Butler for the office of Treasurer of the University, and is rejected because of the insufficiency of the amount. I read again from pages 55 and 56 of Hubbell:

"After my being introduced to my Lord Chancellor, there was some time for my Lord's consideration. Near a week after a message was sent me by Mr. Cottingham, that my Lord would be ready to admit such a day. Before the day came, I had a message contradicting it, upon my Lord Chancellor's being engaged to attend the council on that day. After that I expected the appointment of another day for that purpose; and in the meantime this affair had got into the public newspapers, as everything does, and I was named by everybody to be the person fixed upon, and people resorted to me to transact the business of the office, which I could not do without being duly appointed. And shortly after that time, there was a report spread that my Lord Chancellor had designed to make a present of the place to some gentleman in the country, which gave me an uneasiness, and put me upon an expedient that since I could not have a ready access to so great a person as his Lordship, I went to Kensington one morning to wait upon the Countess of Macclesfield; and upon presenting my name, and that I desired to speak with her, in a short time I had the honor of seeing her, and acquainted her that I was the person my

Lord had promised the office to, and that I could not proceed therein without being sworn; therefore I desired Her Ladyship to intercede with my Lord, that I might be speedily sworn in. Her Ladyship said she never did meddle with any affairs of a public nature. I approached his Lordship's Lady. I used several arguments with her, as that the thing was now public."

This witness in the same testimony then says, that in retreating from Her Ladyship's presence, he deposited on a table near where he was standing at the time, the sum of five thousand four hundred and fifty pounds sterling. This money he held in his hand while he addressed Her Ladyship, and to its effect is attributable the sudden change of neutrality in the affairs of her Lord, to active intercession in behalf of her suitor for office. Now, that fellow was a gentleman in his manner of taking and giving bribes in comparison with your Governor. Had David Butler spurned the bribe as he would: the briber, he would have proven himself an honest man, and have escaped all these charges which are so humiliating and disgraceful. Now we are asked to account for the re-election of Governor Butler, in view of the charges of malfeasance brought against him at the last election. We can easily and truly dispose of that. The facts were well understood, from one end of the State to the other, and how were these facts treated by the Governor? He arranged fictitious statements, from various officials, and when these had packed the case, he boldly declared all the charges of appropriating the school monies to his own use, false and malicious. He announced the fact of his purity in these remarkable words: "If any man says that I have stolen any of the school monies, turn back his collar, seize his ear, and whisper down deep into his

black heart that he is a liar."

These are hard words, and many believing in the sincerity of the declaration, voted for him, supposing that the Governor was like Henry Horn in Jackson's time, that he could not tell a falsehood. I said at the time if the Governor can use those strong words on that subject to contradict them, then I am the Governor's friend, and can support him. I was satisfied at that time that the Governor was unjustly charged. On coming here into the legislative halls and hearing the General Assembly ask the Governor if he had paid that money into the treasury, and he said that he had; then I rested once more; thinking I had been deceived once, I might be deceived again, but I hoped not. In a few hours it was whispered about that the money was not there. We inquired of the Treasurer if the money was there; and the Auditor in two hours afterwards reports to this House that the money had never been paid into the Treasury. Well, now, gentlemen, in this country we claim to be a law-abiding people, and we have a right to the claim, which is founded upon the fact that we are ourselves the law makers. And we do, what is not done by the crowned heads of Europe; we compel our officers to take and subscribe to an oath that they will faithfully perform the duties of their offices. The Governor of this State is supreme, not as an autocrat or king, but in the limits of his office as defined by law. Now in regard to the loan of the Tichenor case. It was loaned by the Governor under very suspicious circumstances indeed. I do not believe the Governor had any power to loan that money, on private securities. I believe that the public fund should be invested on undoubted securities and not for private purposes.

es. Why, would any of you, gentlemen, acting as the custodian of the public fund, give a loan on a building like the one at the end of the avenue, that was already covered by prior claims for several thousand dollars, having knowledge of the fact? How was that money loaned? By David Butler, one of the Commissioners of the school fund? No, it was loaned by David Butler, king. King Butler in this case; and here is the proof:

LINCOLN, NEBRASKA. }  
July 30, 1870. }

To JAMES SWEET, Esq., Treasurer of the State of Nebraska:

SIR—You will loan, on good approved security, to Amanda F. and Anson C. Tichenor, of Lincoln, Nebraska, ten thousand (\$10,000.00) dollars, for the term of five (5) years, out of the first permanent school land funds received by you, as an investment for the State School Fund, at an annual interest of ten (10) per cent., said interest to be paid semi-annually in advance; the security to be approved by me.

[Signed.] DAVID BUTLER.

Who authorized David Butler to place that loan of the school fund upon that building, or anybody else? Why was that security to be approved by "me?" Why did Governor Butler arrogate to himself the sole power of that Board, and allow them to take \$10,000 out of the school fund and loan it upon a pile of boards, without any authority of his colleagues in the School Fund Board? If he had any authority where does it appear? can it be shown anywhere that they authorized him to do so? If they did not, I am satisfied. To be a tyrant does not consist in putting a man to the rack. Tyranny, gentlemen of the Senate, consists in the usurpation of the law. The man who is invested with the panoply of authority; who tramples upon your laws; who brings the honor and reputation of your State into disgrace;

who enriches himself at the public expense, and tramples upon every law, human and divine, for the accomplishment of his own unholy purpose—he is a tyrant. That constitutes a disgrace, an act that makes many men prominent upon the page of history. It was the tyranny of the Judges like Jeffries that gave them an immortality in England. The tyranny over the mind is greater than that over the body. And here we have a tyrant in Nebraska of that description. Who abides not by the laws of your country; who is not a law-abiding citizen; who does not obey the constitution he has sworn to obey. Gentlemen, I shall have little to say in addition to what I have said. I am satisfied that whatever verdict you shall give in this matter will be one that will be dictated purely by justice and the facts presented by the evidence. I know every man here is an honorable man, and desirous to do justice to the State, and also of vindicating the Governor from these foul and damning assertions, if that be possible. And with your verdict I am sure the people will say “well done, good and faithful servants.” If the evidence we produce will not justify the impeachment of the Governor, we do not ask you to do it; but if we make good these articles presented by the Managers in the name of the people, and upon evidence never known to exist in any other case, we shall expect to have justice. And now, as far as I am concerned, I am ready and willing to give the case into your hands.

The PRESIDENT. The counsel for the respondent will now proceed.

Mr. BRIGGS. We do not desire to make a statement of our defense at the present time. The precedents, in

view of these trials, have been for the Managers to open their case first; then to proceed and introduce their evidence. After they have completed the introduction of their evidence, then the respondent has the right, if he chooses, to make a statement of his case, on his part, before he proceeds to produce evidence. We desire to pursue that course in this case.

Mr. MARQUETTE. We so understand the order adopted by the Senate. It was so published in the papers. That the prosecution should open and bring forth their evidence; and at the close, we would then open our case, and bring forth our evidence.

The PRESIDENT. The chair is of the opinion, after having examined the precedent of the impeachment trial of A Johnson, that the counsel for the respondent is correct in his views.

Manager DOOM. Mr. President, I wish the names of witnesses called.

The clerk calls the roll of witnesses as follows:

N. C. Brock, James Sweet, M. J. McBird, R. D. Silver, T. H. Hall, J. Cadman, M. A. McPherson, W. R. Fields, J. N. Cassell, J. W. Woods, James Queen, M. Riddle, E. T. Hudson, E. Veits, D. W. Baker, John Gillespie, C. S. Chase, Seth Robinson, T. L. Griffey, L. Crounse, J. T. Davis, E. Clark, James Gerrans, J. R. Patrick, A. J. Cropsey, C. C. Crowell, J. S. Church, D. R. Dungan, H. D. Hathaway.

Of these, James Sweet, T. H. Hall, J. Cadman, W. R. Fields, J. N. Cassell, James Queen, J. M. Riddle, E. T. Hudson, John Gillespie, C. S. Chase and A. J. Cropsey answered to their names. The Managers stated that T. L. Griffey was excused.

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**TESTIMONY**  
**IN THE**  
**IMPEACHMENT TRIAL.**

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**PART III.**

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# TESTIMONY

## IN THE

### IMPEACHMENT TRIAL

**Fifth Day—Morning Session.**

LINCOLN, March 18, 1871.

**Manager DOOM.** We are prepared to go to trial. Call James Sweet. James Sweet is called and duly sworn by the Secretary.

**Mr. ESTABROOK.** In the first place Mr. President, I wish to offer in evidence this paragraph in the report of the Committee on Ways and Means:

Mr. Rosewater presented the following resolution, which was adopted:

*Resolved,* That the Governor is hereby requested to communicate to this House, at the earliest moment, the name of the agent appointed by authority of an act of the Legislature, to collect from the United States the five per cent. upon the sale of public lands set apart for school purposes prior to the admission of the State, the amount so accrued and due to the State, and the amount collected and paid into the State Treasury. Also, the amount paid to said State agent for his services.

His Excellency submitted the following Special Message:

*To the Honorable Speaker of the House of Representatives:*

In response to a resolution passed by the Honorable House of Representatives relative to the collection of the five per cent. fund, I submit the following report:

Amount accrued and due the State January 1st, 1869, \$16,881.26.

While in Washington in the spring of 1869, I secured the auditing and payment of this claim, and deposited the above amount in the State Treasury. No fee or commission was paid any agent for its collection.

**DAVID BUTLER.**  
Executive Department, Jan. 25, 1871.

The object of offering this in evidence is to show that this five per cent. fund came from Washington. We only ask to introduce so much as is signed by David Butler.

I also offer this portion of the Respondent's answer, found on the first and second pages of that answer:

"And now comes the respondent, David Butler, in his own proper person, saving unto himself all and all manner of exception and advantage to the many errors and imperfections in said articles and specifications in said articles contained, and not confessing any or either of said articles or specifications to be true, for answer to them, or so many thereof as he is advised it is necessary to make answer to, answering saith.

"That it is true the Government of the United States had donated to the State of Nebraska the five per cent. on proceeds of the Public Lands, and the amount thereof was due the State of Nebraska, and that this respondent was authorized to procure the same to be paid over to the Treasurer of said State, and that in the spring of 1869, this respondent procured to be audited and allowed to the State of Nebraska, the sum of \$16,881.26, for



which amount a warrant was duly issued by the proper department at Washington, payable to the order of the respondent, as Governor of said State, and that the said warrant was brought to Nebraska by one E. B. Taylor and deposited in the First National Bank, at Omaha, to the credit of this respondent, as Governor aforesaid, as set forth in said article of Impeachment.

"And this respondent, further answering, says:

"That it is true, that while said money was so deposited, this respondent, as Governor, executed in due form of law, countersigned by the Secretary of State and attested by the Great Seal of the State of Nebraska, a power of attorney to one Nelson C. Brock, who was at that time Deputy State Treasurer of Nebraska, authorizing him to endorse the name of this respondent on said warrant so deposited at the First National Bank, at Omaha, and receive the proceeds thereof, being the full amount of said warrant, \$16,881.26, which, as this respondent is informed and believes, said Brock did receive and deposited the same in the State Treasury of Nebraska; but this respondent most distinctly denies that Brock, with the knowledge or consent of this respondent, deposited the proceeds of said warrant, or any part thereof, with or in the banking house of James Sweet and said Brock, as bankers, or to the order of this respondent, or in any other way by which said sum of money would be subject to the order or control of this respondent, and denies that this respondent had any control over the proceeds of said warrant, or any part thereof, since the said Nelson C. Brock, Deputy State Treasurer, received the proceeds from the First National Bank of Omaha."

#### TESTIMONY OF JAMES SWEET.

By Mr. ESTABROOK:

Question. What is your name, residence, and business?

Answer. James Sweet; I live in Nebraska City, and for the past five years have been engaged in the banking and insurance business.

Q. State if you ever held any public office in Nebraska?

A. I held the office of State Treasurer from January 21, 1869, till January 17, 1871.

Q. While you were State Treasurer, where did you do the business pertaining to your office?

A. In Lincoln. I was associated with others in the banking business. At Nebraska City the firm was James Sweet & Co.; in Lincoln it was James Sweet and Nelson C. Brock. John L. McConnell was a member of the Lincoln banking house up to May, 1870.

Q. State where you kept your office as Treasurer of the State?

A. In the same building as the banking house.

Q. What were your conveniences for the safe keeping of the monies of the State?

A. The State furnished me neither a room nor a safe. At first I kept the public funds in an old-fashioned "Bacon" fire-proof safe, but afterward the Legislature provided by bill, and I purchased a "Herring & Co." burglar-proof safe at a cost of \$1,000.

Q. Is that a full response to the question?

A. I had a bank office and as good a fire-proof safe as there was in the city at that time.

Q. State whether, during the spring and summer of 1869, you were in the habit of keeping the private funds of the firm and the public funds distinct?

A. Yes, sir, when I was here myself.

Q. Who was your deputy?

A. Mr. Nelson C. Brock.

Q. How did he keep the public funds in your absence?

A. They were kept in the same safe where we kept our own money.

Q. State whether you had different departments in your safe?

A. Yes, sir; it was only temporary departments in boxes; in the new safe that we procured there was a separate box that the State funds were kept in, with a key to it, kept separate from the other monies.

Q. State whether you know anything about the five per cent. fund due the State of Nebraska, arising from the sale of U. S. lands?

A. The first time that my attention was called to any such fund being due the State, was during the extra session

of the last Legislature; Mr. Ashton—

Mr. REDICK. Don't state, Mr. Sweet, what Mr. Ashton told you.

Mr. ESTABROOK. Who was Mr. Ashton?

A. He was a member of the Senate at that time.

Q. Did he call upon you to make any inquiries about this fund?

A. Yes, sir.

Q. Do you know whether he was a member of the Investigating Committee?

A. I don't know.

Q. State what Mr. Ashton said to you regarding this five per cent. fund?

Mr. REDICK. I object to the witness giving the conversation of Mr. Ashton, as hearsay.

Mr. ESTABROOK. This being a case of State jurisprudence, and not of criminal courts, I have no doubt a wider door will be opened for the admission of all the testimony that can be had. I don't, however, know what the testimony is going to be; but from what I can gather, I don't think it is going to violate any rules of evidence; but that Mr. Ashton went there to inquire after that important fund, that was said to be there, belonging to the people; and this conversation was the first thing that brought the matter to the knowledge of the Treasurer.

Mr. MARQUETTE. I desire to make a single remark on this question. In no case is it ever allowed to prove anything by what is said by outside parties. Evidence is simply what a witness knows of his own knowledge, or what the accused himself says to him; and you cannot go any farther. They might have said a great many things there, and they might believe them, but it will not be evidence here. Hence, at the outset of this examination, we desire to say that the evidence which goes in here on hearsay is no evidence at all. Now, then, I understand that if Governor Butler is to be

convicted, he is to be convicted alone on the law and the evidence; not upon what others say, but upon what the witnesses brought upon the stand say.

The PRESIDENT. The chair will submit the question to the Senate. The question is, gentlemen, upon the admission of the question asked by the counsel for the prosecution. As many of you as are in favor of the question being asked the witness, will, as your names are called answer "Yea;" as many as are of the contrary opinion will answer "Nay."

The following was the vote:

YAYS—Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, Mr. President—13.

The PRESIDENT. Thirteen having voted in the negative and none in the affirmative, the question is overruled.

Mr. ESTABROOK. You were about to answer, Mr. Sweet, my interrogatory, which has been overruled. Will you state what was the date?

A. As near as I can judge, it was in February, 1869.

Q. In February, 1869?

A. Yes.

Q. What time in February?

A. The early part of the month, previous to the adjournment of the regular session of the Legislature.

Q. State whether you had any conversation with him at all, upon the subject of the five per cent.?

A. He was simply making enquiries in regard to how to get the money from Washington.

Q. Now, I submit whether, in view of this fact, that he was making enquiries as to how to get this money from Washington. State whether anything occurred there which was intended to be communicated to the Legislature in regard to the five per cents?

Mr. REDICK. I object to that.

Mr. MARQUETTE. I believe that the conversation which took place between him and Mr. Ashton has been

ruled out, and can have no tendency to prove anything against the respondent here; and I hope the gentleman will not press the question.

Mr. ESTABROOK. It has assumed a new aspect. I propose to show that in conversation with this party a proposition was made as to the condition upon which Mr. Sweet, acting as the State Treasurer, would procure, at the hands of the Treasurer of the United States, this five per cent. fund, and place it in his safe. He had a jurisdiction over what he should do, and a power to control him and his action, and it was intended to go before the Legislature for the purpose of determining their action on the five per cent. fund. In this new aspect, I ask the question to be put.

Mr. PRESIDENT. The counsel will reduce his question to writing and submit it to the chair.

Mr. C. S. CHASE, one of the witnesses summoned by the Managers. Mr. President: I desire to ask leave of absence until 3 o'clock Monday. The Court is in session in Omaha and I have business there. I can make all my arrangements and come back Monday, and will positively be here at 3 o'clock, Providence permitting.

Mr. ESTABROOK. If the Senate will consent, the Managers will not.

Manager DOOM. The Senate has nothing to do with it if the Managers are willing.

The PRESIDENT. No objection being made, leave of absence is granted to the witness.

Mr. ESTABROOK. I will now submit my question.

The PRESIDENT. The counsel for the Managers submits the following: "Had your conversation with Ashton, reference to the procuring by you of the five per cent. fund from Washington, and was it intended to be

communicated to the body of which he was a member?" Does the counsel for the respondent object?

Mr. BRIGGS. We of course object to that question. The respondent here has two invaluable rights. One is to be confronted with the witnesses face to face. Another, that those witnesses shall be sworn. Now, these statements of Mr. Ashton are not given under sanction of the oath, nor are his statements given outside this hall admissible. While we have more respect for the last Legislature than General Estabrook has, we think we are entitled to the observance of the ruling that hearsay evidence shall not be admitted. Senators have just passed upon the principle involved. It would be hardly necessary to add further to the consideration of this.

Manager DOOM. Mr. President: It will be borne in mind by the Senators that, from the earliest stage in this trial, the honorable counsel for the respondent have stated that this case is to be conducted in the same way that suits in ordinary courts are. That it is to be run in the grooves of an ordinary criminal court. I ask permission to read from page 248 of the 3d volume of the report of the impeachment trial of President Johnson:

"The first effort was to call the Senate, sitting for the trial of impeachment, a court, and not a Senate. Ordinarily, names are of little consequence, but it cannot be doubted that this appellation has been made the starting point for those technicalities which are so proverbial in courts. Constantly we have been reminded of what is called our judicial character, and of the supplementary oath we have taken; as if a Senator were not always under oath, and as if other things within the sphere of his duties were not equally judicial in character. Out of this plausible assumption has come that fine spun thread which lawyers know so well how to weave. The

whole mystification disappears when we look at our constitution, which in no way speaks of impeachment as judicial in character, and in no way speaks of the Senate as a court. On the contrary, it uses positive language inconsistent with this assumption and all its pretended consequences. On this head there can be no doubt."

I will call your attention, Senators, to an article by Hon. John C. Hamilton, to be found on page 356 of the 3d vol. of Johnson's impeachment trial :

"It is urged on behalf of the President, that it was with much doubt and hesitation that the jurisdiction to try impeachment at all, was entrusted to the Senate of the United States. The grant of jurisdiction to the Senate was deferred to the last moment. The entrustment of this power to the Senate was not delayed because of any doubt or hesitation; nor was it deferred. The proposed entrusting this power to the Supreme Court, was before it was determined that the appointment of the judges should be made by the President with the consent of the Senate. This mode of appointment was agreed to unanimously in the convention on the 7th of September, 1787; and the next day Roger Sherman raised the objection that the Supreme Court was 'improper to try the President, because the judges would be appointed by him.' This objection prevailed, and the trial was entrusted to the Senate by the vote of all the States, with one exception; and thus, on the same day, immediately after, these subjects of impeachment were extended from treason and bribery, to 'other high crimes and misdemeanors,' and thus entrusted and thus enlarged, it was on this same day, made to embrace 'the Vice-President and other civil officers of the United States.' Thus it is seen that while the Supreme Court—a judicial body—was contemplated as the court for the trial of impeachments, its jurisdiction was proposed to be limited to two crimes—statutory offenses—and therefore to be governed by "strict rules" of law, but when confided to the Senate, a political body—the jurisdiction was extended to political offenses, in the trial of which from 'the nature of the

proceeding a national inquest,' a commensurate discretion necessarily followed. 'Thus it is a strange venture for any man to declare in the presence of this whole country 'that it is impossible to observe the progress of the deliberations of that convention upon this single question, beginning with the briefest and most open jurisdiction confined in its terms, without coming to the conclusion that it was their determination that the jurisdiction should be circumscribed and limited.' It is here averred, and the evidence is positive, that from the progress of the deliberations of the convention, the opposite conclusion is the only one to come to."

Again, in the same volume, he says, quoting from the *Federalist* :

"This quotation exhibits three most important facts: first, that the subjects of the jurisdiction 'of the court for the trial of impeachments,' are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust; second, that in the delineation and construction of those offenses, the nature of the proceeding—mark the words, 'nature of,'—can never be tied down by the strict rules which, in common cases, limit the discretion of courts; that the discretion of the courts for the trial of impeachments, thus unlimited in its proceedings, is 'an awful discretion,' and that its exercise was contemplated to be applied toward the most confidential and the most distinguished characters of the community."

I would now ask the indulgence of the Senators to read one more extract to show the character of the Court in which you sit. I will read from page 357 :

"In England and the United States there are different systems of law, each with its appropriate tribunals, jurisdiction, and mode of procedure established. The judicial courts have a jurisdiction and procedure well understood. They are governed by the the Constitution, statutory and common law. Military law is a branch of the law of nations recognized in and adopted by the Constitution; has its

tribunals, with their appropriate jurisdiction and procedure. They try and punish offenses relating to the army and navy and the military and naval service, defined mainly by common, unwritten military law, and only to a limited extent by statute. (Attorney General Speed's opinion, of July, 1865, on the trial of the assassins.) Parliamentary law has its tribunals, with legislative, and, for some purposes, a judicial power, including the right to summon witnesses before committees of investigation, punish and even imprison for contempt of its powers or privileges, expel or otherwise punish its members, and with the power of impeachment. These different tribunals do not administer the same law, nor for the same purposes. Each has its own independent law, governed by its own principles and reasons. The same reasons which enable military tribunals to try offenses undefined by statute, authorize impeachment for misdemeanors defined by no written law. The Senate administers the common parliamentary law, of impeachable misdemeanors, and establishes its procedure on principles peculiar to its organization and objects, uncontrolled by the powers of either judicial or military tribunals."

Now, Senators, I think I have placed the idea before you. I do not desire to waste your time, but I am confident that anything that throws light upon the questions before you, is competent as testimony, and I do ask that you will not confine us down to the strict course of proceedings in the criminal courts.

Mr. ESTABROOK. Mr. President, I will just present one single consideration. This is a legislative tribunal, and as such has to inquire into misdemeanors in office, which means the public political acts of the accused, and anything that throws light on such acts is admissible.

Mr. MARQUETTE. Mr. President, I do not propose to claim that the facts should be limited, but we say

that they must be facts. To bring in here what a man has heard is not evidence; if it was, you need only call in the man who has heard the most, and let him tell the whole thing; and, gentlemen, there are some hard things said about men in political times, which if received in evidence would convict any one. What is the authority from which the Honorable Manager has read so much? The introduction to it reads as follows:

"Judge Lawrence, who prepared the 'Brief of the Authorities upon the Law of Impeachable Crimes and Misdemeanors,' found in the body of this work, (p. 82,) has furnished the following additional notes to the brief."

What he has read here is just Judge Lawrence's *dicta*, and not authority. Now, I have but one more thing to say, and that is this, that the admission of this testimony would be contrary to our Constitution, which denominates this a criminal proceeding. It says, Article I, Section 7:

"In all criminal prosecutions, and in cases involving the life or liberty of an individual, the accused shall have a right to a speedy and public trial by an impartial jury; to be informed of the accusation against him; to have a copy of the same when demanded; to be confronted with the witnesses against him; to have compulsory process for his witnesses; and to have the assistance of counsel."

It is called a criminal proceeding in section 7, and section 8 says:

"No person shall be held to answer for a criminal offense unless on the presentment or indictment of a grand jury, except in cases of impeachment."

We are not to be stopped here by simply saying that these are "mere quibbles." That our constitutional rights are to be frittered away by mere quibbles. We ask simply for Mr. Sweet to tell what he knows; and if Mr. Ashton knows anything, let him

be called upon the witness stand and tell what he knows.

The **PRESIDENT**. The Chair will rule, unless some Senator calls for a vote, that the question is not admissible.

By Mr. **ESTABROOK**. Where, Mr. Sweet, did you reside yourself during the time you so acted as Treasurer?

A. My residence was in Nebraska City, Otoe county.

Q. What proportion of your time did you spend in Lincoln?

A. I scarcely know; probably less than one quarter.

Q. Did you know what were the arrangements around the Treasurer's office, and what was the manner of discharging the duties of that office?

A. When I was here I discharged the duties of the office myself, usually. The books were kept by Mr. Brook, for the reason that it is very difficult to keep books correctly and have different persons writing in them and taking charge.

Q. What acts constituted a deposit of the public money with you as public treasurer?

Mr. **REDICK**. I object to that. I want that in writing.

Mr. **ESTABROOK** submitted a written copy of the question to the chair.

The **PRESIDENT**. Does the counsel for the respondent object to this question?

Mr. **REDICK**. Yes. On this ground: That may be a very important question. The whole question here is, as to whether the money was deposited there or not. It appears Mr. Sweet was not there but one-fourth of the time; and if it turn out that somebody else put the money in the treasury, still it would be a deposit of the money, and what the general custom of the treasury was, or what the record shows, is immaterial; and let the Court say whether it was really a deposit or not. They say it was a deposit there; the Governor

says it was. Now they ask him what constituted a deposit. Let him show how it was done, and we, on our side, will show the same. You ask him to swear to a conclusion; we ask him to submit the facts to the Court.

Manager **PORTER**. I submit that the witness being at that time Treasurer of the State, it is perfectly competent for him to state what act constituted a deposit of the money in the State treasury. I can see but little difference in the question proposed and the question submitted by the counsel. It appears to me it is perfectly competent.

Mr. **REDICK**. Without taking up the time of the Senate, there is not much point to the question, yet it may have a significance I cannot quite comprehend. There is no sense to the question unless there is something beyond it. We can all answer that to put money in the Treasury would be a deposit. But the object of the question is to ask the witness to swear to a conclusion of law, and for that reason I object to it.

Senator **HASCALL**. These questions arising in regard to the introduction of testimony, are taking up much time, and I suggest we retire.

Mr. **ESTABROOK**. If the Senate would allow me, I claim this, not upon a broad gauge at all, but strictly upon law received before any tribunal. I now ask him what constituted a deposit of the public money with him as public treasurer, preparatory to an interrogatory, as to whether this money in question was so deposited.

Mr. **MARQUETTE**. I just simply rise to state this, and this is our objection: It does not matter here what Mr. Sweet or Brock did with this money, whether they considered it deposited or not; the way men deposit money is to go to the bank, and not to

the clerk. If this money is given to them, you cannot come in here and allow them to swear to a legal conclusion, that, though they have got the money, it is not a deposit. The facts will go to show the depositing of money with a banker is generally giving it to him whether he—

Mr. ESTABROOK. Whether it is not also to take a receipt back?

Mr. MARQUETTE. I deposit money at my bank in Plattsmouth, but don't take receipts. I trust to their honor. They say they don't want to give me a certificate because they are afraid I won't give the credit upon that. The deposit of this money is giving it to the man who receives the money. They are swearing to the very legal conclusion we have come here to try. Let them swear to facts; what Governor Butler did with it, and what Brock did with it.

The PRESIDENT. Gentlemen, the question is upon the motion of the Senator from Douglas, for the Senate to retire to consider the exceptions taken by the prosecution. The motion was put with the following result:

Yeas—Brown, Cropsey, Hascall, Metz, Kennedy, Sheldon, Thomas, Mr. President—8.

Nays—Gerrard, Hawke, Hilton, Tucker, Tennant—5.

So the Senators retired.

After a short absence the Senators returned to the Senate Chamber.

Senator GERRARD. I move that the Senate, sitting as a Court of Impeachment, take a recess until 2 P. M. Adopted.

#### AFTERNOON SESSION.

The Senate met at 2:30. Roll called. Present—Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, Mr. President.

The PRESIDENT. I am directed to announce that the exceptions taken to the question as to what constitutes a deposit of public monies in a bank, have been over-ruled.

#### DIRECT EXAMINATION RESUMED.

Mr. SWEET on the witness stand.

Mr. ESTABROOK. Mr. Sweet, what act constituted a deposit of public monies with you as Treasurer?

A. The course pursued was, that when money was paid into the Treasury to make out an original and duplicate receipt, and also enter upon the stub of the receipt the fund to which the money was to be credited. The original receipt was delivered to the party making the deposit, and also the duplicate if he requested it. My practice was to keep the money received during the day in an envelope by itself, after making the entries on the books from the stubs of the receipts. The money was counted to see if the amount agreed with the statement on the books. The record was the entry on the books.

Q. Did David Butler ever deposit with you any money derived from the five per cent. on the sale of public lands in Nebraska?

A. No sir; not with me personally, nor in my possession to my knowledge.

Q. Did you ever examine the records in the Treasurer's office to see whether any entry has been made of such deposit?

A. When I made my report to the Legislature I made thorough examination of my books for the purpose of making up my report.

Q. Did you ever have any conversation with David Butler, with regard to this fund—the five per cent. fund? If so, how many times?

A. I did have several conversations with Governor Butler with reference to the fund you speak of.

Q. When and where did you have a conversation with him?

A. The first conversation I think I had with him, was at his private office, at the Capitol building, some time after the adjournment of the special session of the Legislature, last winter.

Q. Can you state the month?

A. No, sir.

Q. I understand you to say that you had a conversation with Governor Butler in his office in this building?

A. Yes, sir.

Q. Can you fix the period?

A. I can not any more definitely than it took place after the adjournment of the January session of the Legislature.

Q. State what occurred in that interview touching the matter of the five per cent. fund?

A. Governor Butler invited me into his private office, and after some informal conversation, he opened the subject of giving security for this money. He said that Gillespie would not approve the securities that he offered; that he had lands in Pawnee county that he offered to mortgage, worth \$30,000, but Gillespie kept persisting that he should pay the money into the Treasury, and he stated he could not do it now, for he had loaned some several thousand dollars of it to some friend, and had to take land in Pawnee county for it; and he asked me to see Gillespie and see if it could not be fixed up.

Q. Is that the whole of the conversation at that interview touching this question?

A. I think that is all that I recollect now.

Q. Did he state who the person was to whom he had made the loan; if so, who was it?

A. He did not state to whom it was.

Q. When next did you have a conversation with him upon this same subject—when and where?

A. Really I cannot state; there had been so many various conversations to that effect, all relating to the Auditor and myself approving the securities that he offered for that money.

Q. Did you ever have any conversation with him in the presence of the Auditor, on the subject of that money; if so, what was it?

A. I had an impression, and I believe I so testified, that we had a conversation as to the approving of the securities, in the Governor's private office after the election; but I think now, that the Auditor was not present

at the conversation, but I went and talked with the Auditor about it.

Q. Have you had your attention drawn to the question that this money did not belong to the permanent fund, and that the commissioners were authorized to take security? Was that point discussed between you and Gov. Butler at any time?

A. I think it was.

Q. Where and when was this discussion?

A. These conversations were so numerous I cannot tell when it was. My memory is very defective for the last few years, and I have depended upon records and dates, so that I cannot give the exact time.

Q. When was it that you first had a conversation with Gov. Butler upon the subject of making this fund a loan to him?

A. After the adjournment of the extra session of the Legislature.

Q. What did you understand from Gov. Butler, to be the condition of that fund, and where it was?

Mr. REDICK. Mr. President: I object to that question.

The PRESIDENT. The counsel will reduce his question to writing.

Mr. ESTABROOK. What did you understand from the Governor to be the condition of the funds at that time, and what was it?

Mr. REDICK. I object to the "understanding" part of it.

The PRESIDENT. The following question has been asked by the counsel for the prosecution: "What did you understand from the Governor to be the condition of the fund at that time, and what was it?" As many as are of opinion that the question is admissible, will, as their names are called, answer "Yea;" those of the contrary opinion will answer "Nay."

The clerk called the roll.

Those voting in the affirmative were—Messrs. Cropsey, Hawke, Hascall, Metz, Sheldon, Thomas—6.

Nays—Messrs. Brown, Gerrard, Hilton, Kennedy, Tucker, Tennant, Mr. President—7.



The PRESIDENT. Gentlemen: Six having voted in the affirmative and seven in the negative, the question is ruled as inadmissible.

Mr. ESTABROOK. Did you ever understand from the Governor that he ever applied for a loan of the five per cent fund?

Mr. REDICK. Is not that trifling with the Senate?

The PRESIDENT. The chair overrules the question.

Mr. ESTABROOK. Mr. Sweet, state what the Governor said in regard to that fund?

A. He stated that Gillespie insisted upon his paying that fund into the treasury; that he had loaned \$10,000 to a friend and was obliged to take lands in Pawnee county for it and could not put the money in.

Q. State what the Governor said as to the condition or the situation of the balance of that fund?

A. I do not think he said anything about it further than that.

Q. Did you know, at that time, of your knowledge, what was the situation of that fund?

A. I did not.

[The State Treasurer's Cash Book was here produced.]

Q. Mr. Sweet, state whether you recognize that book?

A. Yes. It is the Treasurer's Cash Book.

Q. State whether that was the record while you were the Treasurer?

A. Yes.

Q. Will you look over that book and state whether there is any record of the five per cent. fund?

A. It will take a long time.

Q. Have you ever looked over that book for the purpose of ascertaining whether there was such an entry?

A. I have looked over the book to ascertain the amount of each fund coming into my hands.

Q. State whether there is such an entry.

Mr. REDICK. I will make an objection for our own protection, that that is irrelevant. I object to that book on the ground because, if we de-

posit the money in the State Treasurer's office. It is none of our business whether Mr. Sweet puts it on the book or not.

Mr. ESTABROOK. State whether that book contains any record of any deposit of the five per cent. fund of the State of Nebraska?

Mr. REDICK. I just want to read from the first volume of "Greenleaf's Law of Evidence," section 120, page 180:

"There are two clauses of admissible entries between which there is a clear distinction in regard to the principle on which they are received in evidence. The one clause consists of entries made against the interest of the party making them; and these derived their admissibility from these circumstances alone. It is not therefore material when they were made."

Mr. ESTABROOK. I suppose, then, it would follow that if the clerk who made the entry would be the best evidence, the clerk who did not make the record would be the best evidence. This is the custodian, and therefore we ask him.

Mr. MARQUETTE. We do not know what they ask. There may be an effort to introduce evidence of a third party, which is never admissible. We say we are willing to waive this; but do not desire this to be a precedent.

Mr. ESTABROOK. You insist, I reckon, this—that the person who did make the entry is now the best evidence?

Q. Mr. Sweet, state whether any entry appears on the book touching the five per cent. fund of that State?

A. I have found no entry during the term I was Treasurer.

Q. State whether you have made diligent search?

A. I have made diligent search in order to find the different funds from which money was received during my term of office, and found no such record.

Mr. ESTABROOK. We shall need Mr. Sweet again, as a witness on other points. We have concluded the examination on the matter of the 5 per cent. fund, and I would like to examine witnesses upon one point at a time.

Mr. REDICK. In order to save time, we wish you to prosecute the examination, and not allow the witness to leave the stand until you are entirely done with him.

Mr. ESTABROOK. Mr. Sweet, did you ever have any conversation with the Governor in regard to two certain warrants paid by you, or purporting to be paid to C. S. Chase? if so, state what that conversation was.

A. Governor Butler came to me and stated that there were two warrants issued to Mr. Chase for a thousand dollars each, by the Auditor, which had been paid in my office; one of them was issued by mistake, he said, and he thought Mr. Chase proposed making some trouble about it; and he desired to deposit one thousand dollars and take up one of the warrants; it was purely a mistake, and he wished to take it up and prevent trouble.

Q. Can you state the numbers of the warrants?

A. No, sir.

Q. Will you look at numbers 1343 and 1344 and see if these are the entries made in the book?

A. I can't tell by this book; I could tell by the stubs of the receipts if I had them.

Q. Will you go on and tell all the conversation you had on this subject?

A. The Governor either gave me a thousand dollars, or a check on James Sweet and Brook. for a thousand dollars; I can't tell which. Can't tell you whether I surrendered the warrant to the Governor or Auditor, but it was cancelled.

Q. What amount was it?

A. One thousand dollars. I think; across the face of it was the date it was originally paid.

Q. State whether this occurrence took place at or about the time of the sitting of the Investigating Committee at the special session of the Legislature?

A. I can't state the date of it.

Q. In that conversation, was there any reference to the Investigating Committee? If so, what was it?

A. Don't remember that there was. I think that was the only reference the Governor made to Mr. Chase.

Q. In whose name was the original cancellation made?

A. In the name of C. S. Chase.

Q. State fully what the records show with regard to such cancellation?

Mr. REDICK. I object to that, Mr. President.

The PRESIDENT. The counsel for the Managers will reduce his question to writing. The counsel for the respondent will state their objections.

Mr. MARQUETTE. Mr. President: I simply want to make this point, that an entry made by a third party is not admissible. They can make any kind of entries there to injure the defendant. If this was the respondent's book, an entry made there against his interest would be evidence against him. It is true, that there are some entries such as accounts of merchants, under a special statute admissible; but, I don't think it applies to entries of this kind.

Mr. REDICK. Mr. President and Senators: Supposing that Mr. Sweet has entered this upon this book, "returned \$10,000 stolen money," and then comes into this Court and spits it out here as evidence; and, if we are rightly informed, there is enough in there to convict anybody. There are some entries there of conscience money.

Manager PORTER. Mr. President: I understand that that book has been recognized here as the proper entry book of the Treasurer, and those entries are properly made. The question now is for the witnesses to state what is in that book; and then, if they want to come in here and attack what

is in that book, they can do so. That is a public record.

Mr. REDICK. At the instance of Governor Butler I will withdraw my objections.

Mr. ESTABROOK. Magnanimous!

The PRESIDENT. The objection is withdrawn, and the counsel will go on with the question.

Mr. ESTABROOK. State then, sir, if you please, what is the full record entry?

A. The only entry I find refers to receipt No. 352, the entry is made. 'Attorney General C. S. Chase \$1,000.'

Q. Was there any entry of the cancellation?

A. There is no entry of cancellation on this book.

Q. Was there another book of records in the office?

A. There was a receipt book with stubs, that states the substance of the transaction.

Q. What does that record show in regard to those warrants of \$1,000 each? State fully.

A. This book is really giving the date of the receipt of the money; the number of the receipt given for the money; the county that pays it; in what year it applies; then to what fund it belongs. On the other side are the disbursements; giving the date of the payment; what it is paid on; the number of the warrants; by whom received or redeemed; the fund out of which it is paid.

Q. Does that show the payment of these two \$1,000 warrants?

A. Yes. It will show it by the number of the warrants. That is all we can tell by.

Q. Does not that warrant state to whom it was paid, and for what? Will you turn to the record of the payment of those warrants? I think the numbers are 1,343 and 1,344.

A. This simply says 1,343 was paid February 18th, 1869; and 1,344 was paid the 22d day of February, in the same year.

Q. Does it state to whom they were paid?

A. No.

Q. That, you say, would be shown by the stub?

A. No. That would be shown on the warrant.

Q. Does that book show when one of the warrants was returned and cancelled; and if so, state what the record shows, about a year afterwards or a little more, I guess.

A. February 18th 1870. If you will get the stub book that will explain.

Q. Is there no name connected with it?

A. Receipt No. 352; "let Attorney-General. C. S. Chase, receive from General Fund, \$1,000."

Q. Was that money paid to you as Treasurer.

A. Yes.

Q. Do you recollect the incident distinctly?

A. If I could see the stub of the receipt there might be something come to my mind.

Q. Who paid, or who brought that warrant to you to be cancelled?

A. The warrant was in my office already cancelled as a paid warrant.

Q. Then who paid the money?

A. Governor Butler gave me \$1,000 in currency or check, with authority to cancel that bond. I took the money or check to the office, made the receipt, and hunted up the warrant; cancelled it by punching out the name of the Auditor; and I cannot state whether I delivered that warrant to the Governor or the Auditor. It probably should go to the Auditor's office.

Q. Did you have any conversation with the Governor at that time with regard to what you speak of? If so, what was it?

A. I have stated that he said the warrant was issued through mistake; that Mr. Chase was disposed to make some trouble about it, and that he wanted to pay back the money; he said that Mr. Chase now claimed he did not want so much money as \$2,000.

Q. The counsel has said something about there being the term "conscience money" entered upon the records in your office. Will you explain if there was such an entry upon your books, and what it meant?

A. I think in my report I reported to have received to the general fund, \$1,000 "conscience money."

Q. Why did you use that term?

A. Because I did not know what other term to employ; I could not report it as having been received from any county, because they would be entitled to credit for that amount of money.

Q. It was merely a freak of your own, then?

A. Well, sir, I did not propose to bring forward any person's name.

[A book containing blank receipts and stubs of receipts brought forward.]

Q. Mr. Sweet, see if that is the book you referred to; if so, see if you can find the stubs there you have spoken of?

A. Yes, sir, this is the stub book, and the stub is filled out in my own handwriting: "Office of State Treasurer, Lincoln, Feb. 18th, 1870; received of C. S. Chase, late Attorney-General of the State of Nebraska, \$1,000, for return of cancelled warrant, No. 1,344, on general fund, on account of the year 1869. No. of the receipt, 352"; that's the State Treasurer's number?

Q. Did you make that entry yourself, in your own handwriting?

A. Yes, sir.

Q. State whether you received that money so entered, either from David Butler or C. S. Chase?

A. I received it from David Butler.

Q. State whether you know an individual by the name of Anson C. Tichenor?

A. Yes, sir.

Q. State whether you knew anything about a loan of school money being made to him; if so, state all you know about it?

A. The first I knew anything about such a loan being made to A. C. Tichenor, I learned at Omaha on the occasion of the meeting there of the Republican State Central Committee; I was examined there previous to the election; I think it was sometime in September, 1870; I then heard that such a loan had been made.

Q. From whom did you learn it?

A. I think I learned it from general conversation.

Q. Did you have any conversation with Governor Butler with regard to the subject at Omaha? If so, what was that conversation?

A. I have no special recollection any further than Mr. Butler, in conversation with other parties, insisted that the money was well secured.

Q. State then, that whether, as School Commissioner for the investment of such funds, you know anything about it?

A. I do not.

Q. Have you ever examined the question to know what the facts were about that loan?

A. No, sir. I only know from what I could gather from what I heard.

Q. Did you know anything from Governor Butler about it?

A. I think the Governor told me that he asked the Attorney-General to examine the title, and he did so; and the title was good and the loan secure.

Q. Look at this letter that seems to be addressed to you, and state whether you ever received it?

A. I think I have seen such a document, but the first time I saw it was long after the election.

Q. State whether before or after the loan was made?

A. A long time after the loan was made.

Q. I understand you to say, then, that you had nothing to do with the loan nor knew anything about it at the time it was made?

A. No sir.

Manager DOOM. I will read the letter referred to:

LINCOLN, NEB., July 30, 1870.

To JAMES SWEET, Esq., Treasurer of the State of Nebraska.

SIR: You will loan, on good approved security, to Amanda F. and Anson C. Tichenor, of Lincoln, Nebraska, ten thousand (\$10,000.00) dollars, for the term of five (5) years, out of the first permanent School Land Funds received by you as an investment for the State School Fund, at an annual interest of ten (10) per cent., said interest to be paid semi-annually in advance; the security to be approved by me. (Signed),

DAVID BUTLER,

## CROSS EXAMINATION OF MR. SWEET.

By Mr. REDICK:

Question. What day did you appoint your deputy Treasurer N. C. Brock? Can you tell?

Answer. No sir.

Q. Was he deputy from the time you were elected Treasurer?

A. I think he was from the time I took the office, January 18th, 1869, and he continued to act as my deputy during the whole term of my office.

Q. And, at the same time, he was a partner with you in the banking business?

A. Yes, sir.

Q. After you took the office in January, how long did you remain here, in Lincoln, attending to the duties of the office yourself, before you went away; state as near as you can?

A. I think I was here about three or four weeks, then I went home, and was at home a few days and came back again. I don't remember how long I stayed at that time.

Q. When you was away did you leave the treasury books under the control of your deputy?

A. Yes, sir.

Q. He done the same duties that you done while here?

A. Yes, sir, he kept the books entirely.

Q. Didn't he do all the duties of the Treasurer?

A. Yes, sir; what he was authorized to do.

Q. Were you at Lincoln during all the month of April, 1869?

A. That I cannot say.

Q. Will you swear you were in Lincoln at all during the month of April, 1869?

A. I cannot state.

Q. Will you swear you were in Lincoln at all during the month of May, 1869?

A. I think I was, two or three weeks.

Q. Were you here at the time Brock went to Omaha to get the five per cent. fund by authority from the Governor?

A. No, sir, I was not.

Q. Did you know that he was going to get it?

A. No, sir, I did not.

Q. When did you first learn that he had got it?

A. I did not learn that any such money had come to the State until the time of the Investigating Committee.

Q. That is not the question I asked you. When did you first learn that he had got the money?

A. I cannot state. It was long after that investigation by the special session.

Q. Well, sir, now tell the Court again, if you please, how the money was kept in the State Treasury at that time—May, 1869?

A. I had large envelopes that I kept the funds in, keeping them separate and distinct from any of the company funds.

Q. How many separate State funds were there?

A. There was the permanent school fund, temporary school fund, general fund, judiciary fund. The judiciary and general fund went in all together; and there was a penitentiary fund and a building fund. I think that is all. But you understand that these funds were not kept separate; the State money was kept together.

Q. You say you kept the State money in envelopes?

A. Yes, sir; they were kept in the envelopes in the safe.

Q. What kind of envelopes?

A. Well, sir, sometimes we had no funds at all.

Q. And then you did not keep them in the envelopes, of course?

A. No, sir.

Q. Now tell the Court how long you continued to do that kind of business yourself in person; and when you turned the duties over to Brock?

A. In my absence, or while I was staying here, he signed the warrants.

Q. You say you were away more than three-fourths of the time?

A. I gave up the books for him to keep as soon as we got the new books. He transcribed the entries up to the time we got a new set; and kept the entries from that time forward.

Q. When did he get the new books?

A. In May or June.

Q. Do you recollect when you first saw Brock after he had been to Kountz's and got the money?

A. He was at Nebraska City. About the middle of May, I should judge.

Q. Did you learn at that time that he had gone to Kountz's bank and had got the school fund?

A. No, sir; I did not know the object of his visit, and was not informed.

Q. Then you state here, I believe, in answer to a question put by one of the Managers, that that money was never put into the State Treasury, to your personal knowledge, and to nobody's else, so far as you know?

A. Yes.

Q. And you state, further, that the first you knew was after the first special session of the Legislature?

A. Yes. As soon as the monies had been received from the general Government.

A. If that money had been deposited in the State Treasury, to what fund would it have gone in your way of keeping the funds?

A. As there is no statute fixing it, it would have been entered as five per cent. funds.

Q. Then you state here, do you, Mr. Sweet, that you never permitted any of the separate funds to be mixed up with your own money?

A. I do not state that any had up to the time that the act was repealed about keeping identical funds. I kept it separate, and directed Mr. Brock to do the same; and until that was repealed I never mixed the funds.

Q. Did you know a man connected about your bank by the name of "John Rix?"

A. No, sir.

Q. Did you ever see his name about your books?

A. Yes, sir.

Q. Where did he reside?

A. It was a fictitious name.

Q. Did he ever have a large deposit on your books?

A. I don't know that I ever looked at the books of James Sweet and Brock, except to see how my own account stood.

Q. Did you not know that the name of John Rix, as you say, was a fictitious name for the purpose of keeping an account with a certain fund that belonged to the State?

A. I did during the last year.

Q. Then these State funds were deposited in the name of John Rix, for convenience only?

A. Yes, sir.

Q. Now state whether or not all the State funds were deposited in that bank in the name of John Rix?

A. Yes, sir, since a year ago.

Q. Why was it not kept so before?

A. Because the law before that required that the identical funds received, be kept on hand.

Q. Before that time did you not have fictitious names aside from John Rix?

A. Not that I know of.

Q. Now for the purpose of settling this thing clearly—because it may become important—I will ask you to state to the Court whether or not you will swear that the name of John Rix was not on your books in the month of May, 1869?

A. I did not look at the books and will not swear it was not. I never looked at any account, except my own personal account.

Q. Now if it should be true, Mr. Sweet, the State monies was kept in the name of John Rix (which you say you believe they were), in the month of May, 1869, if Brock should have received any State money from any source, he would naturally put it in the same place, or credit the same person?

Manager PORTER. I object to the question.

Mr. REDICK. I will put the question to you again. You say you will not swear that the name of John Rix was not on your books in the month of May, 1869?

Mr. ESTABROOK. I would like to have that question put in writing.

The question is reduced to writing, as follows:

Q. You say that all the State funds were kept in the name of John Rix, and that you will not swear that it was not on the books in May, 1869, and if it was, would not all the State funds received, then be credited to that name?

Mr. ESTABROOK. I object to this, because it is no question at all. It premises what the witness has not stated at all, and there is not an interrogatory in it.

Manager PORTER. Mr. President, we object to that question, for it, in the first place, asks the witness to give his conclusion on the matter, and then draws an inference therefrom.

Mr. REDICK. Mr. President, I withdraw the question to save time.

Q. Mr. Sweet, was Mr. Brock authorized as clerk of the State Treasurer to place these funds to the credit of John Rix?

A. No, sir; there was no such understanding between him and me.

Q. Didn't you know that the name of John Rix was on your books?

A. I examined one time and found that was the way they were doing, and the bookkeeper stated that it was necessary in order to keep the books.

Q. Suppose you wanted to pay out a portion of John Rix's account, how would you do it?

A. Draw a check.

Q. And sign John Rix's name to it?

A. Yes, sir.

Q. Did you ever do it?

A. No, sir, I don't know that I did. We always stated in the check that the warrant was drawn for State purposes.

Q. You did that ever since the name of John Rix appeared on your books?

A. I don't know that we did, until the thing came to my attention about a year ago.

Q. Did you fix the date of that conversation with the Governor, in his office?

A. No, sir; I could not fix a date only that it was after the close of the extra session.

Q. And you fix the date at that time that you heard the State had received this money?

A. That was during the special session. The Governor told me that Gillespie was not on friendly terms with him, and was determined to make him pay that money in, and he stated the reason why he could do it.

Q. Did not you state to Governor Butler in June, 1869, at your bank in Lincoln, that that money was then lying idle and that he might as well borrow it and pay interest on it?

A. No, sir.

Q. State whether or not in Omaha city, at the time the Central Committee met, last year, in September last, you did not state in the presence of Charley Seymour that you had requested Governor Butler to borrow that money, that the State might receive interest on it?

A. No, sir; I don't think I ever made any such statement.

Q. State whether you made that statement at the same time and place in the presence of Senator Hilton who sits here?

A. I have no recollection of that kind.

Q. Did you not make that statement, at the same time, and place, in the presence of Mr. Hathaway of Plattsmouth?

A. No sir, I know that I was telegraphed to come to Omaha to Metropolitan Hotel, and when I got there, Governor Butler took me out and told me that the Central Committee was going to put him through and cut his political head right off, and he told me to make this all right before the people; so that they would be satisfied; and if I stated anything that is not correct, it was a political dodge and I did it to save Governor Butler and nothing else.

Q. Did you not state, at the same time and on the same occasion, in the presence of Mr. Gere, in speaking of this fund, that it had been deposited, and that when he went back to Lincoln to see Brock, and if the entries were not made to make them?

A. On that occasion Governor Butler stated that he had executed a mortgage and left it with Brock and desired me to instruct Brock, through Mr. Gere, to forward that mortgage to Pawnee county to be recorded.

Q. Now, Mr. Sweet, did not you state to Mr. J. S. Church, last winter, during the session of the Legislature, that the money had been deposited in the Treasury, and that it was all straight, during the investigation?

A. I think it was Mr. Church. I said that I believed that the money was deposited. Mr. Brock kept the books and I could not tell to a certainty unless I looked.

Q. Mr. Sweet, I will ask you whether or not, at the time you first

conversed with Governor Butler, you did not request him to send the description of the land, and you would have the mortgage made out covering the amount?

A. No, sir; my recollection was this: Governor Butler requested me to draw the mortgages for him, and stated that he would have some man in his office, I think it was Mr. Kellogg, write him the description, and I told him I would draw the mortgages. At that time, I had supposed he had the right to loan this money. I had no objection, as a friend, to draw the mortgages for him. I was not acting as State Treasurer in drawing mortgages.

Q. I will ask you one question more. Between the time you were sworn to-day, during the *interim* of this Court, did you have any conversation with General Estabrook, in regard to this matter?

A. I did; we had a conversation touching this matter.

Mr. ESTABROOK. Mr. Sweet, will you state what that conversation was?

Mr. REDICK. I object to that.

Mr. ESTABROOK. Do you insist on your objection?

Mr. REDICK. I do insist upon my objection.

The PRESIDENT. Gentlemen, the counsel for the Managers desires to ask the witness what conversation took place during the *interim* of the Court. The counsel for the defense objects. As many as are of opinion that the objection be sustained will, as their names are called, answer "Aye;" as many as are of the contrary opinion, will answer "Nay."

The vote was called with the following result:

Yeas—Messrs. Sheldon, Tucker.

Nays—Messrs. Brown, Cropsey, Gerard, Hawke, Hascall, Hilton, Metz, Kennedy, Thomas, Tennant, Mr. President.

The PRESIDENT. The objection is overruled and the question will be asked.

Mr. REDICK. I objected simply because it is illegal. I only wished to show the unfair action of the counsel on the part of the prosecution.

Manager PORTER. It has always been a practice with me as an attorney, that if I had a matter in Court in which I was to call witnesses, that I had a conversation with them for the purpose of finding out what they knew in reference to the case. And I submit to this Court whether there is any object in the question the gentleman made. There was a desire to throw an impression that the Managers had wished to corrupt witnesses in this case. But I do not suppose this matter requires great argument. I submit neither the counsel or the Managers have feeling in this matter whatever. But I do claim it is the right and the duty of the counsel, if they have witnesses, in order to avoid wasting the time of the Court, to converse with those witnesses and find the points upon which they can give information.

Manager Porter submits the question in writing: "State what that conversation was?"

A. Mr. Estabrook inquired of me when this five per cent. fund first came to my notice. I said it was during the extra session of the last Legislature. He then remarked that it was unnecessary to ask me any questions about that, previous to that time. That was about all.

Mr. REDICK. What was the object of introducing this fictitious name?

A. It was done for the convenience of the book keeper.

Q. During the interview at Omaha, Gov. Butler requested you to make a statement with regard to this matter?

A. Yes, sir. He said that the matter must be fixed up. He stated that some men were determined to take his political head off, if it was not fixed up.



Q. You said that prior to that time the money was placed in box envelopes, I think?

A. Yes, sir.

Q. Where were they placed?

A. I had only one safe, with different shelves. On one shelf we kept our own funds, and on another shelf we kept the funds belonging to the State, also all the State warrants.

Q. Before this law was passed repealing the laws which required that the identical funds received into the Treasury be kept, was there any occasion to use this fictitious name of John Rix?

A. No, sir.

Q. Before the law was passed, were the State funds kept in the name of John Rix?

A. No, sir. I kept them myself in these boxes.

Senator TUCKER. I would like to ask whether the name of John Rix appeared on the books previous to the passage of that law?

A. I cannot say, because I never took any personal supervision of the books, excepting to my own funds. Can't state whether it did or did not.

Senator KENNEDY. Was it on the private books of Sweet & Brock, that this name appeared, or on the State books?

A. It was on the firm book of Sweet & Brock.

Q. Was there any interest on that thousand dollars which was paid out to Chase, and returned at the end of the year?

A. No one paid the interest.

The PRESIDENT. I rise to state that the rule requires Senators to put their questions in writing. This rule will be complied with from this time.

Mr. REDICK. Did you not report that there had been a full year's interest paid on the \$16,000 taken by Governor Butler?

A. No, sir. I reported to the Superintendent of Public Instruction that there had been received \$1,400 in personal security as interest.

Q. Will you swear that you did not make returns in regard to this Rix account, during the absence of Mr. Brock?

A. I would not swear positively

that I did or did not, but I have no recollection that I did.

Mr. ESTABROOK. Will you explain now, to the Senate, all about that interest matter?

A. Mr. Beal, Superintendent of Public Instruction, when about to make a distribution of the public monies received, requested me to make that report just as large as possible. He told me that he had seen the Governor and—

Mr. REDICK. You need not state what Mr. Beal said.

Witness SWEET. I went to the Governor, and he said if I requested it, he would pay that money in three days.

Mr. ESTABROOK. And on the strength of that you made that report?

A. Yes sir.

Q. How was that sum fixed up; did the Governor do it?

A. No, sir. We did not know the exact amount, and reported it as near as we could estimate.

Q. Did the Governor ever pay that interest?

A. No, sir.

Senator GERRARD. Did you give to anyone a receipt for the \$1,000 paid by the Governor for Chase; if so, to whom?

A. I do not remember whether I took the warrant with the duplicate receipt to the Governor, or whether I gave them to the Auditor.

Mr. ESTABROOK. State whether there was not a receipt left in the office among the papers there?

A. It may be that the original receipt was left there.

Senator TUCKER. Does not the name of John Rix appear upon your book in the same way, and upon the same book as the entries would appear had you kept the account with the different funds belonging to the State; only the name of John Rix being used in lieu thereof?

A. As I understand this account of John Rix, it was a convenience to credit all the State monies to that account.

Q. Was this John Rix account kept on the book of the State Treasurer?

A. No, sir, it was not, it was kept on the bank books of Sweet & Brock.

Senator THOMAS. Who drew the money on that warrant issued to Chase?

A. I paid the money to Governor Butler.

Q. Had that been assigned by Chase to Governor Butler?

A. I cannot state if there was any assignment; very often I paid warrants to gentlemen that I knew to be reliable, where the name of the parties was endorsed by the person to whom I paid it; my recollection is that Governor Butler asked me to let him take the money up to Mr. Chase.

Senator KENNEDY. Was it necessary that the State money should be kept on the books of James Sweet and Brock?

A. It was not absolutely necessary, and was a matter of convenience to get it there.

Senator THOMAS. Do you mean that the Chase warrant was endorsed by Governor Butler? State whose name was endorsed thereon?

A. It was endorsed "C. S. Chase" and "D. Butler"; by procurement.

Senator THOMAS. Did Governor Butler say whether he had any authority to receive the money on that warrant, for Colonel Chase?

A. My recollection is that Governor Butler said he wanted to take the money to Chase; that he was anxious for the money.

Manager DOOM. The Managers are through with the witness, Mr. President. It is now five o'clock. The next witness is Brock. I would ask the Senate to adjourn. If they desire a night session, we can have Mr. Brock here at any hour. I expect you will have to send to his business house. We would ask the Court to adjourn till half-past seven.

Senator TUCKER. I move this Court adjourn until 8 o'clock.

The PRESIDENT. Gentlemen, it is moved and seconded that the court adjourn until eight o'clock. As many as are in favor will say "aye;" those opposed "no." The "ayes" seem to have it.

A division was called for.

The PRESIDENT. Gentlemen, as many as are in favor of a recess until eight o'clock, will rise and remain standing until counted; those opposed will do likewise. Four gentlemen in favor and seven against; the motion is lost.

Manager DOOM. Call N. C. Brock.

The PRESIDENT. The Sergeant-at-Arms, will call N. C. Brock.

N. C. Brock called, but did not answer to his name.

Manager PORTER. Mr. President: We desire the list of the witnesses called, and attachments issued for those not answering to their names.

The list of witnesses was called, the following persons answering to their names: J. Cadman, W. R. Fields, J. M. Riddle, John Gillespie, A. J. Cropsey, and James Green.

Mr. ESTABROOK. I think the witnesses will all be here by Monday morning.

Manager DOOM. We will ask that attachments be issued for those witnesses who are absent.

Manager HUDSON. I will not trouble the Senate much, but in order that wrong impression may not go out with regard to those witnesses, I desire to make a statement. Several approached me, and said that as it was Saturday, and it was generally understood that Mr. Sweet would occupy the remainder of the day, they would like to be excused from remaining here, and a great many of these witnesses have our consent to be absent until Monday morning.

Senator GERRARD. I move that the Senate, sitting as a Court of Impeachment, do now adjourn until 9 A. M., Monday. Adopted.

**Sixth Day's Proceedings.**

March 20, 9 A. M.

The PRESIDENT. The Senate will come to order.

Present all the Senators, the Managers and their counsel.

The PRESIDENT. The Sergeant-at-Arms will inform the Governor and his counsel that the Senate sitting as a Court of Impeachment is ready to proceed with the trial. The Secretary will read the Journal of Saturday. Journal read.

Mr. ESTABROOK. Mr. President, I will again call attention of the Senate, that I also offered the admissions of the respondent in his answer touching the loan of the 5 per cent. fund, in evidence.

The PRESIDENT. The Secretary will make the correction as indicated by the counsel for the Managers. Are there any further corrections? If not, the Journal will stand approved. The Managers will now proceed with their evidence in support of the charges contained in the articles of Impeachment.

Manager DOOM. Mr. President, we desire N. C. Brock to be called next.

**TESTIMONY OF NELSON C. BROCK.**

NELSON C. BROCK sworn.

By Mr. ESTABROOK: Question. State to the Senate what is your name and place of residence?

Answer. Nelson C. Brock, place of residence Lincoln, Nebraska.

Q. What is your business?

A. Banker.

Q. For how long has that been your business?

A. Since June, 1868.

Q. Are you in that business alone or in connection with other parties; and if so, who are those parties?

A. At that time, June 1868, in connection with James Sweet, and John L. McConnell and lately James Sweet alone.

Q. Where was your bank?

A. At Lincoln.

Q. Did you at any time, in conversation with Governor Butler, make any arrangements about going to Omaha to get the 5 per cent. fund on deposit there?

A. I made arrangements in May, 1869, to get some money of the First National Bank of Omaha; some money for Governor Butler.

Q. State the day in May if you can remember?

A. Well, I cannot state positively, but I think it was on the 15th day of May, 1869, I had the first conversation about that with Governor Butler.

Q. State what was said to you by Governor Butler about getting this money?

A. Governor Butler came to me and stated that he had some money in the bank at Omaha; he wanted to get the money down here, and he also wanted to know what interest we would allow him on the money, and I told him if he would give me a draft on the bank, and I could get the money, we would allow him 7 per cent.

Q. State whether he said he would do so or not, at that conversation?

A. I think he said so in another conversation, but not that one.

Q. State what, afterward, was done in regard to it?

A. He gave me a power of attorney to go to Omaha and get the money, and I got the money.

Q. Have you a copy of that power of attorney?

A. No, sir.

Q. What did you do with it?

A. I think I gave it to the First National Bank at Omaha; I think I done the business there with Mr. Kountz.

Q. State whether that power of attorney was issued under a seal or not?

A. I am under the impression that it was under seal; it was suggested, in order to facilitate the matter, that it should be made under the seal of the State, as there was some doubt whether the warrant was in the name of David Butler, only, or David Butler, Governor.

Q. I mean what addition there was to the name of David Butler?

A. I do not know.

Q. Did he at that time state to what fund it belonged? and if so, to what?

Mr. REDICK. Ask what he said.

Mr. ESTABROOK. I ask, did he state to what fund it belonged, and if so, to what?

A. He did not state to what fund; he said he had the money.

Q. Now state what you did from that point. How much money did you receive?

A. I cannot tell.

Q. Cannot you tell how near?

A. I could not.

Q. You received whatever the amount was?

A. Yes.

Q. Can you state the amount?

A. I would say about \$17,000.

Q. Before leaving Omaha did you make use of any portion of that money?

A. I am under the impression I did. I think I paid a note for Governor Butler, but I could not state.

Q. State whether, if you paid a note for Governor Butler, you paid it out of the fund?

A. If I did, it was out of the fund.

Q. What did you do with that money?

A. I brought it here.

Q. At what time of day did you arrive?

A. I think about noon. I brought the money in a satchel.

Q. What did you do with it?

A. I could not tell exactly; the first entries—

Mr. REDICK. I object to any entries. If there is any note in writing I want that.

A. I presume I put the money in the vault.

Mr. ESTABROOK. With the satchel?

A. Yes.

Q. When next did you see Governor Butler?

A. I could not tell.

Q. Could you tell about how many days or hours?

A. No.

Q. When next did you converse with him, if at all, in regard to this money?

A. I could not state.

Q. Well, about how long afterward?

A. If you will let me tell what I did, my impression is that I had conversation, say the next day, perhaps the same day. It was a rainy day—or rather the evening was.

A. State when you had this conversation?

A. I could not say, but I should judge it was the next day.

Q. State what occurred at the conversation; and what did you do with the money?

A. He told me to issue three certificates of deposit of \$5,000 each, and place the balance to his account.

Q. Did you do so?

A. I did.

Mr. REDICK. I object to that. That is no way to try a law suit. It is illegal.

Mr. ESTABROOK. Now go on and state further, the history of that fund?

A. I issued, as shown by books—

Mr. REDICK. I object to what is shown by the books.

Mr. ESTABROOK. Do you mean you prepared or issued?

A. I wrote out.

Mr. REDICK. I object to that. Put the question in writing.

Mr. ESTABROOK. I will state what I expect will be shown. I expect to show, gentlemen, by this witness, at this point, that, in obedience to the suggestion of Governor Butler, these certificates were made out, but before they were delivered these were destroyed and other forms of evidence of indebtedness were given. Do you mean you prepared or issued?

A. Our books show that on the 22d—

Mr. REDICK. State what you did.

A. On the 22d of May I filled out three certificates of deposit, payable to Governor Butler, of \$5,000 each, and also placed to his credit \$1,486.66; and on the 25th of May, 1869, I cancelled the three certificates of deposit issued May 22d, and issued three in the place

of them for an equal amount; and those certificates he held—

**Mr. ESTABROOK.** Wait a minute. State the difference, or why you made this change?

**A.** The reason was to save three days interest on \$15,000. These certificates were drawing seven per cent. interest, but did not call for that, and they were issued on the Saturday and took them up on Monday or Tuesday.

**Q.** State whether the second lot of certificates were drawing the same interest?

**A.** The same.

**Q.** Were they the same in form?

**A.** We have no particular form.

**Q.** State whether this was done by arrangement with the Governor?

**Mr. REDICK.** I submit, whether this examination is not a disgrace to any court. [Addressing Mr. Estabrook.] Ain't you ashamed of yourself to put questions like this? Why don't you ask him what he did? I object.

**Mr. ESTABROOK.** I am obliged to the gentleman for this little law lecture, when I ask the witness to state whether it is not a leading form?

**Mr. REDICK.** You did not put it that way.

**Mr. ESTABROOK.** Yes, I did.

**Q.** State whether that change was made by virtue of an understanding with the Governor?

Objected to by Mr. Redick.

Question put in writing.

**The PRESIDENT.** Gentlemen, the question is upon the exception taken by the counsel for defense. As many as are in favor of the exception being sustained will, as their names are called, answer "aye." As many as are of different opinion, will answer "nay."

**Ayes—Messrs. Brown, Cropsey, Hilton, Metz, Thomas, Tucker, Tenant, Mr. President.**

**Nays—Messrs. Gerrard, Hawke, Hascall, Kennedy, Sheldon.**

**Mr. PRESIDENT.** Eight gentlemen having voted in the affirmative and five in the negative, the objection is overruled.

**Mr. ESTABROOK.** State whether any arrangements were made with Governor Butler with regard to that change; if so, what?

**A.** I think there was no arrangement made with regard to the change of certificates. The cancelling of the first, and issuing of the second, was done by us to save the interest which the bank was paying.

**Q.** State if there was an understanding about what was to be done with that money?

**A.** Well, Governor Butler made arrangement that, by having overdrawn his account, he was to surrender these certificates, and he overdraw his account at different times to the amount of \$16,000 or \$17,000, and I sent after the certificates, cancelled them, and placed them to his credit to help balance his account. The last certificates were annulled, I think on the last day of September, 1870. The checks had been made out as any one checks money out of any bank.

**Q.** State when these certificates were cancelled?

**A.** They were all cancelled at the same time. The three certificates issued first were cancelled at the same time, and then the other three.

**Q.** State whether there was any conversation had with Governor Butler and you learned from him from what source the money was derived; if so, state what it was?

**A.** I don't remember of the Governor having told me.

**Q.** State whether you know anything about his loaning any part of this same State fund; and if so, to whom?

**A.** I don't know anything more than this: his telling me he had loaned out about \$10,000 in Pawnee county.

**Q.** Was this \$10,000 drawn from that fund he had then?

**A.** I don't know.

**Q.** When was this statement made to you with regard to loaning this money?

**A.** Some time last summer.

**Q.** State the whole of that conversation?

A. I don't know that there was much conversation about it. We were talking about hard times, and being short of money, and he said he had loaned that money out in Pawnee county and could not get it back.

Q. Did you ever hear the Governor state anything about executing mortgages to secure this money?

A. I think he told me sometime in last September that he wanted to secure the State for that School money, and he wanted to give a mortgage on land in Pawnee county. I think he said, either before or since that, that he wanted to put it on lots in town here, so that he could sell the lots at any time and take up the mortgage.

Q. Did he tell you, at that time, from what source the money was derived; and if so, what is it?

A. He told me. I thing at that time, that he wanted to show a mortgage on the Pawnee land. He said that the damned hounds wanted to know that the money was secured.

Q. Did he say whom he meant by "damned hounds?"

A. I don't think he did.

Q. Mr. Brock, do you know from what source that money was derived; if so what is it?

A. I only know from conversation. Did not know from any conversation I had with Governor Butler.

Q. State whether you ever procured at any time at the instance of Governor Butler, any other like sum from the First National Bank of Omaha; and if so, state the circumstances?

A. I never did.

Q. State whether you ever had any conversation with Governor Butler in regard to procuring for yourself an appointment as Treasurer of the Board of Regents of the University of Nebraska?

A. I spoke to Governor Butler several times about getting appointed Treasurer of the Board of Regents of the University, and he told me at one time he wanted to get the appointment for me if he could; and along just a short time before the Board was to meet, I went to him and told him if he would secure that appointment for me I would give him \$500, and before we got through talking I told him I would give him \$750. He said he did not think Mr. McConnell's time was up

yet. When McConnell sold out to Mr. Sweet and myself, he promised to resign in my favor.

Q. Where was this conversation?

A. In the Governor's private office. I left with the impression that he would use his influence to get me appointed; I was afterward told that he did not do so.

Q. Told by him?

A. No, sir.

Q. State what you know in regard to the loan of a certain sum of money to Anson C. Tichenor; and if so, state all you know from the beginning of it?

A. Tichenor came to me and told me—

Mr. REDICK. Stop a moment. I object to your stating anything any body told you, except Governor Butler.

Mr. ESTABROOK. State whether you ever had any conversation with Governor Butler in regard to the loan to Tichenor and wife; if so, state what it was.

A. Governor Butler came to my office to see me, and we went into the bedroom used as a private office, and we talked about the loan to Tichenor. He asked me what I thought about it, and I told him Tichenor was a good fellow and ought to have the money, if he wanted it, and he said he thought so; that it was a good loan, and he let him have the money.

Q. What date was this?

A. I could not say, probably in July, 1870.

Q. After this conversation, what did you do?

A. I told Tichenor what he should have to do in order to get the money.

Q. State what was done?

A. Well, sir, all the papers that was necessary to procure the loan was made out.

Q. What papers?

A. The bond and securities, mortgage and abstract of title. I stated to him to have the Attorney General examine the papers and make out the abstract of title.

Q. State whether you was authorized by the commissioners to loan this money?

A. I had an application from Governor Butler to loan the money to Tichenor.

Q. What do you mean by an application?

A. Well, it was a written request to loan Tichenor and his wife this money.

Q. Have you that writing?

A. The State Treasurer has it. It was left in the office of the State Treasurer.

Q. State whose names of the board of commissioners was signed to it?

A. Governor Butler's name was signed to one of them and one was signed by Auditor Gillespie.

Q. Were they the same or separate papers?

A. Separate papers.

Q. State what was in those papers?

Mr. REDICK. Mr. President, I object to that question, and hope the gentleman will produce the papers if they can be had. [Papers sent for.]

Mr. ESTABROOK. Mr. Brock, will you state the amount of that loan?

A. \$10,000.

Q. Do you know anything about the security given for that loan?

A. The Tichenor House.

Q. State as to its sufficiency?

A. At the time that loan was made the title was as shown in the abstract, I would say it was pretty good security. The property was worth from \$5,000 to \$10,000 more than the incumbrances as shown by the abstract.

Q. State whether there were former incumbrances?

A. The abstract shows there was one mortgage of \$4,000, and one of \$4,500.

Q. What, in your estimation, was the value of that property at that time?

A. It was pretty hard to tell what the lots were worth. I was under the impression that the building cost—

Q. Never mind its cost. What was its value?

A. I would say \$25,000. That was my impression.

Q. You think it would have brought that?

A. It would, if Tichenor had had a little more money to push it.

Q. Did you ever have any conversation with the Governor in regard to any interest he had in procuring this loan for Mr. Tichenor; and if so, state where it was, when it was, and what it was?

Mr. REDICK. Wait a moment.

Mr. ESTABROOK. State whether the Tichenor House was built at the time you made this loan?

A. I think it was not completed, but most so.

Q. Is your estimate of its value based upon the property with the building complete?

A. Yes, with the building complete.

Q. Now, sir, state whether you ever had any conversation with the Governor in regard to any interest he had in the loan to Tichenor; and if so, what it was?

Mr. REDICK. Cite the specification to which that question alludes.

Mr. ESTABROOK. Specification 1, article 7:

"He, the said David Butler, Governor, as aforesaid, did, on or about the 30th day of July, A. D. 1870, instruct James Sweet, State Treasurer, he being then and there the custodian of said school funds, to let one Anson C. Tichenor have \$10,000 of said school money, and he, the said David Butler, Governor, as aforesaid, would approve the security therefor. The said sum was loaned to said Tichenor without the assent of either the State Auditor or Treasurer. That the security taken therefor by him, the said Governor, was at the time known to be wholly inadequate and insufficient; whereby the said David Butler, Governor of the State of Nebraska, then and there committed and was guilty of a misdemeanor in office."

Mr. ESTABROOK. Go on, sir.

A. At the time the *Omaha Herald* was publishing Governor Butler getting money for that loan, I said to the Governor I did not know he received money from Tichenor before; he did not admit whether he did or not; he said it was all right.

Q. Did he say anything in that interview about any money—

Mr. REDICK. I object to "did he."

Mr. ESTABROOK. Who's running this side?

Q. Did he say anything to you during that interview, in regard to any money you had received in connection with it; and if so, what did he state?

A. Not at that time.

Q. Well, at any other interview?

A. He told me, "For God's sake, don't you admit you got any money from Tichenor at any other time."

Q. State all the conversation?

A. That was in his private office.

Q. State all the conversation touching this subject?

A. He said Tichenor was "a damned rascal, and would implicate anybody who had anything to do with him"; and told me not to admit I got anything. I told the Governor he had fixed Tichenor in nice shape, to swear in this loan.

Q. What next did he say?

A. The Governor said he had not seen Tichenor himself.

Q. State what followed, in regard to what you should not do?

A. He told me, "For God's sake not to admit I got any money from Tichenor at any other time". I never had any extended conversation with the Governor about it.

Q. State whether this conversation related to any testimony you should give; if so, what relation, or at what investigation you was to give the testimony?

A. My impression is that it was after I had given in my testimony, some time; I can not say when, I have been here so many times.

Q. Was it not to fix up the testimony with you, before you gave in your testimony?

A. No, sir, I think not.

Q. Do the records of your bank contain any reference to the Tichenor loan?

Mr. REDICK. I object; simply to preserve my objections.

Mr. ESTABROOK. If so, what are the records?

A. Our books show that there is \$10,000 credited to Tichenor.

Q. State what office you held at that time, if any?

A. I was Deputy State Treasurer.

Q. State whether you was the custodian of the Treasurer's books?

A. I was.

Q. State whether or not any refer-

ence was made upon the Treasurer's books to this loan?

A. Yes, sir, there was an entry there of the loan.

Q. State whether the Treasurer's books show anything with regard to the securities taken?

A. They do not.

Q. State whether they show anything with regard to the action of the Board of School Commissioners upon the subject?

A. I don't know what you call the "records;" there are papers there that show.

Q. Well, do the papers on file in your office show the action of the State Board?

A. There is a record on Mr. Koenig's books. These show the manner in which the money was loaned to Tichenor.

Q. State whether you had conversation with the Governor with reference to an examination of these records and files; if so state what it was?

A. The Governor said for me to let Seth Robinson examine these papers.

Q. State whether you had any conversation with the Governor, about the books being withheld from anybody?

A. I don't remember any such conversation.

Q. State whether you had any conversations about the examination of these records, at any time since the record of this Tichenor loan was made, and since these papers were put on file?

A. I can't swear that Governor Butler ever spoke to me about showing the books to anybody since the loan to Tichenor.

Q. Let me call your attention to what occurred during the last campaign, and repeat my inquiry as to whether you had instructions about not showing papers and books?

A. He told me not to show these books to any one during the political fight.

Q. Was that since these Tichenor papers were put on file?

A. I think not, but could not say positively.

Q. Can't you state when he gave this direction to you?

A. No, sir.



Q. Can you state why he gave this direction to you ?

A. He never stated why.

Q. Do you know why ?

A. I have an impression.

Q. Did you gather this from the Governor ?

A. Yes, sir.

Mr. MARQUETTE. The impression that he has, is no evidence; what the Governor says is evidence, but nothing else. Now, he can state what the Governor said, but he cannot state what conclusion he drew from this, for it is for the Senate to draw its conclusions, and not Mr. Brock—that is a principle very well understood; because a man might be mistaken in hearing him, as to just what he does say.

The PRESIDENT. If the council for the Managers desire to ask that question, they will reduce it to writing.

Mr. ESTABROOK. An individual may learn a fact from conversation with an individual, without being able to repeat exactly the knowledge thus obtained. It is always competent evidence to state what he learned; it is not necessary for him to give precisely the same language used. Now, in obedience to this rule, we ask what the witness learned from the Governor, as to his motives for withholding these records.

Mr. MARQUETTE. A man can state what he learned. The proper question is, "what did he say, and what did you say?" If the witness cannot recollect precisely what was said, he might say, "I think he said this, or that." The question is not, "what do you think you learned from him?" The witness may "suppose" he learned things, which he never did learn. The question is, "what did you learn from what the Governor said?" The object of this question is to get him to say that he learned

something from the Governor which he never did learn. Now, if Governor Butler is condemned, we want it to be on what he has said and done. Let the question be "what did he say—all he said." Let the Senate learn from this themselves; what the "impression" of the witness is, we cannot admit as evidence.

Mr. ESTABROOK. Mr. President, I simply ask the witness to state what he learned from what Gov. Butler said.

The PRESIDENT. Gentlemen, the following question has been asked by the counsel for the Managers: "What did you learn from Governor Butler as to his motive in requesting you to withhold the record?" It is objected to. The question is, shall the objection be sustained. As many of you as are of the opinion that the objection should be sustained, will, as your names are called, answer "aye"; and as many as are of a contrary opinion, will, answer "no."

The following is the vote:

Ayes—Messrs Brown, Cropsey, Gerard, Hawke, Hascall, Hilton, Metz, Sheldon, Thomas, Tucker, Tennant, Mr. President.

Nay.—Mr. Kennedy.

The PRESIDENT. Twelve members having voted in the affirmative, and one in the negative, the objection is sustained.

Mr. ESTABROOK. Will you state fully all that occurred between you and the Governor, during the interview to which you have alluded, in regard to withholding the records?

Mr. MARQUETTE. Mr. President: I think that question is objectionable, just as the other.

Mr. ESTABROOK. To gratify the gentleman, I will ask: What was said by the Governor, during that interview, about withholding the records?

A. Well, I cannot state what was said. It was to keep the records from the public, so they could not see that

the \$16,000 was not on the books. That is what I gathered from what the Governor said.

Mr. ESTABROOK. Mr. President: We will close our examination of this witness until the records are brought in, when we desire to examine him with regard to what the records contain about this Tichenor loan.

# CROSS-EXAMINATION OF MR. BROCK.

By Mr. REDICK:

Question. What relation are you to James Sweet?

Answer. Do you mean blood relation?

Mr. ESTABROOK. Hold on a moment—

Mr. REDICK. Yes, sir, blood relation, or any other relation?

A. Mr. Sweet is my uncle.

Mr. ESTABROOK. Hold on, I am requested by one of the Senators to ask you if certificates of deposit were issued to any one for that \$16,000; and, if so, where are those certificates?

A. They are right here before me. (Certificates passed to the counsel for the Managers.)

Mr. ESTABROOK. (To counsel for Respondent.) Have you any objection to these certificates?

(Certificates examined by counsel for Respondent.)

Mr. REDICK. No sir, we have no objection.

Mr. ESTABROOK. How many are there?

A. Six.

Q. You have testified already about three which were cancelled?

A. Yes sir, and the other three were given in lieu thereof.

Q. Have you in your possession the order he addressed to you in regard to the Tichenor loan?

A. No, sir.

Mr. REDICK. What relation are you to John Rix?

A. He is a particular friend of mine.

Q. Where did you first meet Rix?

A. I met him, she, or it, in the First National Bank of James Sweet and Brock.

Q. Is Rix a married man?

A. Not that I know of.

Q. You stated, in your examination in chief, that you did not learn from Governor Butler that this was school money that you was going after to Omaha?

Mr. ESTABROOK. That is not what he stated.

Mr. REDICK. I believe, then, you stated that you did not know from what source that \$16,000 came from?

A. No, sir; I knew it came from Washington.

Q. Now fix the time when you first learned what money you went for?

A. I cannot tell you.

Q. Fix the time as near as you can?

A. I have no date, at all.

Q. Did you learn it before last Monday?

A. Yes, sir.

Q. When did you first ascertain that it was school money that you got from Korntz?

A. I cannot tell you.

Q. Can you fix the time within three months?

A. No, sir.

Q. Within six months?

A. I don't think I can fix it at all.

Q. You say, then, when you went to Omaha after that money you did not know what money it was or where it came from?

A. I knew it came from Washington, but I considered it was none of my business what money it was.

Q. Did you see Mr. Sweet as you went to Omaha?

A. I went by way of Nebraska City, and saw Mr. Sweet there but did not tell him what I was going for.

Q. You got the money?

A. Yes, sir.

Q. You stated, I believe, that the power of attorney you had to get that money was under the seal of the State. Was it countersigned by the Secretary of the State?

A. I could not state whether it was or not, but I think it was.

Q. How did you draw the money? Did you get it in currency?

A. I think I did. I presume I got it all in currency. It was in the forenoon.

Q. What time did you leave Omaha thereafter?

A. I think in the evening. I went through Nebraska City on the train.

Q. After you got the money, where did you put it?

A. In my carpet-sack, all the money I got; and if I paid the note, I put all the money in the carpet-sack; I will not swear I paid the note.

Q. After you put the money in the carpet-sack, did you have occasion to open it again till you got to Lincoln?

A. I do not know if I did or not.

Q. What time did you get to Lincoln?

A. I think, about noon.

Q. Did you go directly to the bank?

A. I presume I did.

Q. When you got there what did you do with the carpet-sack and the money in it?

A. I presume I put it in the vault.

Q. When did you next see the money, after the carpet-sack was put in the vault?

A. Perhaps the next day.

Q. If it was that day, what did you do with the money?

A. I presume I counted it over again.

Q. At that time did you have anybody present in the bank?

A. There is usually somebody there.

Q. Who was there?

A. Mr. McConnell was there.

Q. Well, sir, if you counted over the money; and you think you did, what did you do with the identical money you brought from Omaha?

A. I would be apt to put it in the safe.

Q. Where you kept your money generally, or a special place?

A. Into the general place.

Q. Now, sir, after you did that, state whether you did not send to Governor Butler a little voucher or memorandum of the amount of money received by you?

A. I could not say.

Q. Will you swear you did not?

A. No, sir.

Q. What is your best recollection?

Mr. ESTABROOK. I object.

Mr. REDICK. What was your best recollection?

Mr. ESTABROOK. Give what was in the note,

Mr. REDICK. [To Mr. Estabrook] I don't want to gabble with you. Make your objection and put it in writing. [To witness]:

Q. What is your best recollection about sending Governor Butler a voucher or a little paper, showing the amount of money you collected?

A. I have no recollection at all on the subject.

Q. Will you swear you did, or did not?

A. I will not swear. I have no recollection about it.

Q. Now, sir, will you tell the Court what entry you made in your books after you put the money into the general pot?

Mr. ESTABROOK. I object.

Mr. REDICK. I withdraw. I think you are right.

Mr. REDICK. Mr. Brock, are those books down at your bank now—the books of Sweet & Brock?

A. They are.

Q. Are they the State books you had at the time?

A. No, sir.

Q. Where are they?

A. Turned over to the State Treasurer.

Q. But the books of Sweet & Brock are there?

A. Yes.

Q. Will you bring them here that we may examine them?

A. There is one book we are using all the time,—the one containing the entry. We would not like that away from the bank.

Q. After you put this \$16,000 into the general fund, as you say, state whether or not you used that money just the same as other money?

A. I did. Bank with it, loan it, and used it.

Q. At the time you got it in Omaha you were Deputy State Treasurer?

A. I was.

Q. Did you not state, just before starting to Omaha, at your bank, to Mr. J. L. McConnell, that you were going to Omaha to get the State funds that Governor Butler had there, and when you returned with that amount, that, together with the amount about to be paid in by the County Treasurer, would make your bank flush and easy?

A. Not to my knowledge.

Q. Will you swear you did not tell him that?

A. I will not swear.

Q. Mr. Brock, when you came from Omaha with the money, did not John L. McConnell count the money in your presence on the counter?

A. Not to my knowledge. He might. He acted as a banker and cashier.

Q. Did you not, at that time, say to Mr. McConnell that that was to go into the school fund?

A. I did not; not that I am sure of.

Q. At the time this money came into your bank, was you in the habit of keeping school funds in separate envelopes, or did it all go into one vault?

A. We have a private box; in this we kept most of the State money.

Q. Is it not true that the State money almost entirely was kept in the name of John Rix?

A. The name of John Rix did not appear on our books until September, 1869.

Q. Before that, in whose name was the State money kept?

A. It was not kept in anybody's name.

Q. Did you not hold certificates in the name of Governor Butler, for large amounts of State money?

A. Yes, sir.

Q. After this \$17,000 was put into the bank, did you not issue certificates of deposit to the borrower?

A. Yes, three certificates of deposit of \$5,000 each.

Q. How long after that was it you issued the certificates of deposit?

A. I don't know; the book here will show.

Q. Tell the Court about the aggregate amount of State funds you held in your own name?

A. I can't say, because I don't know.

Q. Will you say that you don't hold in your own name, State funds to the amount of over \$60,000?

A. I will not say.

Q. Will you swear to \$50,000?

A. I could not say anything about it.

Q. Now, sir, tell the Court why you hold State funds in your own name?

A. Because the law passed in the session of 1869 required us to keep the identical funds received; the funds and money so paid in was in drafts and currency, and I issued certificates of deposit to myself, and deposited them.

Q. Then it was done to evade the law?

A. Yes, sir.

Q. Then why was this money kept in the name of John Rix?

A. Because it was necessary to have some name to do this business with.

Q. Who first suggested the name of the fictitious man Rix?

Question objected to and put in writing.

The PRESIDENT. The question is upon the exceptions. All in favor of the exceptions being sustained, will, as their names are called, answer, "Aye;" those of the contrary opinion will answer, "Nay."

Roll called: Ayes—Messrs. Brown, Cropsey, Thomas.

Nays—Messrs. Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Tucker, Tennant, Mr. President.

The PRESIDENT. Three gentlemen having voted in the affirmative, and ten in the negative, the exceptions are overruled.

Mr. REDICK. Who first suggested the name of John Rix to go on the books?

A. It never was suggested. I thought of it, I presume, and made the first entry myself; was what the *Herald* called "book-keeper general."

Q. Did the other member of the firm recognize that way of keeping accounts?

A. The other member of the firm had but little to do with keeping the books; I am the fellow, myself, that kept the books.

Q. State whether or not—speaking of books—you stated to Mr. McConnell, just after returning from your bridal trip, in answer to a statement he made to you that Sweet was dissatisfied with your book, if you did not say to Mr. McConnell, "If James Sweet will stay at home I will fix these books so that no damned Legislature

or Investigating Committee will be the wiser by them?

A. No, sir.

Q. During the time this money was kept in your name—this State fund—and in the name of Rix, state what was done with it; did you bank upon it?

A. We banked upon a portion of it.

Q. Did you deal in the purchase and sale of State warrants?

A. Yes, sir.

Q. Who was the man that generally bought the warrants?

A. The firm; all of them.

Q. Was not Mr. McConnell the man of the firm to buy the warrants?

A. Not particularly.

Q. Did he buy some?

A. Yes, sir.

Q. Did you and Mr. Sweet buy warrants as State Treasurer and deputy?

A. No, sir.

Q. How did you deal in them, then?

A. I have bought some.

Q. Have you bought any at a discount?

A. Yes, sir.

Q. Can you fix the date when you bought one?

A. I think I bought one about two weeks ago.

Q. Can you fix a date when you bought any while that money was in your name?

A. I could not.

Q. Did your bank buy them, then?

A. Yes, sir.

Q. At a discount?

A. I think so; the books will show I think.

Q. Did you not state to Mr. McConnell, and in the presence of Sweet, —or else Sweet in your presence—that he should buy the warrants, as you was Deputy of the State Treasurer, and it would not look well for you to buy them?

A. No, sir.

Q. State whether or not all the State funds were not kept on the books of Sweet & Brock at that time?

A. I think not.

Q. What proportion was kept on deposit in your name?

A. I could not tell.

Q. At the time you went up to the Governor's office to see about going to

Omaha to get this money, did you not, in the presence of Attorney-General Robinson, talk about this money?

A. I did not go to the Governor's office.

Q. Where was that conversation?

A. The most of the conversation was at the back-door of our bank.

Q. State whether you did not in the presence of Attorney-General Robinson, in the Governor's office, talk about this being the school fund you was going for; and whether you did not discuss the propriety of making a power of attorney under the State seal, as it was not known whether the warrant was made payable to David Butler, or to David Butler, Governor?

A. No, sir, I never had any such conversation.

Q. Didn't the firm of Sweet & Brock, at the time, know what money you was going for?

A. No, sir.

Q. At the time of the late campaign when Governor Croxton was down here smelling around your office, did you not show Croxton the books of your bank?

A. I don't recollect of his being here.

Q. Did you not state to Mr. Gere that your books showed settlement, and that Governor Butler must have known the amount, for he had sent you a voucher showing that amount?

A. No, sir.

Q. Will you swear to that?

A. I will swear I never did tell him any such thing.

Q. Now, in regard to the offer you made to bribe Governor Butler to use his influence in procuring for you the position of Treasurer of the Board of Regents of the State University, you told him you would give him \$750, did you not?

A. Yes, sir, I told him that.

Q. You say you went away with the impression that that would be all right?

A. I did.

Q. Will you swear he never said any such thing?

A. I will not.

Q. Don't you know, Mr. Brock, that after that he worked against you?

A. The first I did know was in the answer he filed after he told me he

saw McConnell was there, and it was no use in him working for me.

Q. Don't you know McConnell was elected?

A. I have been told that.

Q. Did you not think it took a good deal of cheek, on your part, to offer to bribe an officer?

A. No, sir.

Q. Now, sir, in regard to the Tichenor loan. You say you and the Governor had a talk?

A. Yes.

Q. You were Deputy State Treasurer in the talk?

A. Yes.

Q. And you, as Deputy Treasurer, agreed as far as you and he were concerned. You were ready to make a loan?

Mr. ESTABROOK. I object.

Mr. MARQUETTE. Well, we desire that question.

The PRESIDENT. The counsel for the defense will submit the question in writing.

Mr. ESTABROOK. I presume the idea is to show that here was concurrent action between the Governor, one of the Commissioners, and Brock, as Deputy Treasurer, constituted another of the Commissioners.

Mr. REDICK. Yes.

Mr. ESTABROOK. Do you claim to act as one of the Commissioners?

Mr. REDICK. I am not making that claim.

Mr. ESTABROOK. Send for a copy of the Revised Statutes.

Mr. MARQUETTE. I will write the question.

The PRESIDENT. Gentlemen, the counsel for the respondent asks the witness the following question: "You had a conversation with the Governor about the Tichenor loan, and you and the Governor agreed, as far as you and he were concerned, you were ready to make the loan?" It is objected to. The question is, shall the objection be sustained?

Mr. ESTABROOK. It is stated in connection with it that that proposition is to show that the deputy was one of the board.

Mr. MARQUETTE. Yes.

Mr. ESTABROOK. I will show he was not.

Mr. MARQUETTE. Our object is simply this. Mr. Brock has already testified, at this time he believed. Here is the very matter of difficulty, as to whether he had all the rights of Treasurer or not. We don't pretend to argue his acts were endorsed by the State Treasurer, he believing, at this time, that the property was good, and the loan such an one as ought to be made. We want to show he made it in good faith, and that they believed it was all right,

Mr. ESTABROOK. (Reading from the Revised Statutes of Nebraska.)

Section 2, Chapter 15. In the absence or disability of the principal, the deputy shall perform the duties of his principal pertaining to his own office, but when an officer is required to act in conjunction with or in place of another officer, his deputy cannot act in his place.

Therefore I object to the question that he acted as one of the Commissioners.

Mr. REDICK. The only object is to show the good faith of Governor Butler; that when he had the consent of Brock he had the same of Sweet. It is only for that purpose. Unless they show a willingness to corrupt, they cannot hold him responsible.

Mr. ESTABROOK. I deny that proposition. The books are full of instances where individuals have been impeached for insanity and they may be for idioy, and if we have not a Governor who understands law, it is time we had one. The excuse is, he has simply acted ignorantly. It is all the same to the court whether it was

done ignorantly, foolishly, or corruptly.

**Mr. MARQUETTE.** We have a right on the proposition to show that it has a tendency to show that at this time, it was believed by him and everybody else, that he would give security; and he, as Deputy Treasurer, had a right to act.

**Mr. ESTABROOK.** There must be a concurrent action. This thing of catching up Brock to know whether Sweet endorsed this action of Brock, is an insult to this people who want to know what has become of the school fund. It is not to the point to show that the doings of this man Brock were afterward endorsed by his superior. I claim that this action was entirely wrong. Now we want to lay this distinction before you at the outset. We wish to disclaim all sanction to this action unless there was a joint meeting, a joint conclusion by the Board of School Commissioners about it, and that nobody outside had anything to do with it.

**The PRESIDENT.** Gentlemen, the question is upon the exception taken to the question. As many as are in favor of the exceptions being sustained will, as their names are called, answer "aye." As many as have a contrary opinion, answer "nay."

Roll called. Yeas—Messrs. Cropsey, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Mr. President.

Nays—Messrs. Brown, Gerrard, Thomas, Tucker, Tennant.

**The PRESIDENT.** Eight having voted in the affirmative and five in the negative, the exceptions are sustained.

**Mr. REDICK.** Mr. Brock, when applications were made for a loan of the school funds, were they not made direct to the Treasurer, Mr. Sweet?

**A.** I think so. When the second loan was made, there had been no

regular form established at that time.

**Q.** I will ask you if you did not state to one Mr. Chapin that the matter of the school fund was all fixed up with Governor Butler?

**A.** I may have, for I did all I could to help Governor Butler during election.

**Q.** If you issued certificates of deposit for Governor Butler, where would you keep them, if not delivered to the Governor?

**A.** They were kept hanging up in the office if not delivered.

**Q.** Mr. Sweet and Mr. McConnell would have access to them?

**A.** Yes, sir.

**Q.** When certificates of deposit are issued, the books must show somewhere?

**A.** Yes, sir.

**Q.** How much capital did you put into the firm constituted by McConnell, Sweet and yourself?

**Mr. ESTABROOK.** I object to the question.

**Mr. REDICK.** I will ask this question instead: You say you commenced business in January, 1868?

**A.** Yes, sir.

**Q.** When did Sweet take possession of his office and run it in connection with your bank, as Treasurer?

**A.** January 21st, I think.

**Q.** Now state to the Court about what was the extent of the business of your Bank, from January, 1869, during the next six months thereafter?

**Mr. ESTABROOK.** We object to the question.

**Mr. REDICK.** I want to show the Senators this state of facts by my question: that when the firm of Sweet, McConnell and Brock was formed, Brock had no money. McConnell about \$5,000, and Sweet \$1,500, and that they did but little business. From the time Sweet came in as Treasurer, during the next six months, they did a business of \$108,000. I wish to show that they used the State funds to do this business with. For the time being I will withdraw this question, and ask another one.

Q. Mr. Brock, state whether or not you made a report as Deputy State Treasurer showing the receipt of that money in the State Treasury—the five per cent. fund?

A. I never made an official report of it.

Q. Did you ever make an unofficial report of it?

A. I made a statement, but I admit it was a lie made for Governor Butler's sake.

Q. Did you sign it as Deputy of the State Treasurer?

A. I may have, but it was not official.

Q. Was that report published in the newspapers at that time?

A. I think it was.

Q. Just look at that paper and see whether that is the report you refer to?

A. I think that is all right. No, it is not right—not correct.

Q. Then that is not the report you made?

A. I think not.

Q. This is the *State Journal*, published on the 23d of September, 1870?

A. I made a good many reports, but they did not get any of them straight.

Q. That appears to be your name down there? (Pointing to signature to report.)

A. Yes, sir.

Q. Who sent that report to the State Auditor?

A. What report?

Q. The one we are talking about?

A. I don't remember, now, that I sent any report to the State Auditor.

Q. For whom was that report made?

A. That is what I intended to be a statement I made to the Central Committee, and to parties around Omaha. I made a little memorandum statement once to the Auditor, but it was not that one, I don't think.

MR. BROCK RE-EXAMINED.

By Mr. ESTABROOK:

Question. You have stated, in response to the interrogatory of Mr. Redick, that you made several statements in regard to this school fund?

Answer. I did.

Q. With what object did you make these statements?

Mr. REDICK. Well, sir, I object to that. (Question reduced to writing.) Now, General, it is not necessary for me to make any objections at all to that; it would simply open a door to the rebutting of it, and a long cross-examination.

Mr. ESTABROOK. The reason why I urge this question, is, because these statements have been called out here, and we have a right to all the particulars surrounding these statements by all the rules of evidence.

Mr. MARQUETTE. What we urge is simply this: Here is a written statement by this party. He comes in here to swear it away—to contradict himself. Anything put in writing always speaks for itself. When put in writing, it is all the proof necessary, all that can be given, and he has no right to come in here and swear away what he has put in writing. And all we have asked is simply to put that in evidence, which we have a right to do—what his object was. If he says it was to pacify the people, I don't think that would help it. It may go to show that this party's evidence goes for nothing. If he deceives the people once he may deceive them again. I don't—

Mr. ESTABROOK. We ask the motive and object of issuing these different statements.

Mr. MARQUETTE. If you don't ask him to state, let the written statement speak for itself.

The PRESIDENT. The counsel for the Managers has asked the witness the following question: "State with what object you made those different statements"? As many as are of opinion that the objection be sustained,



will, as their names are called, answer "aye." Those opposed will answer "no."

The vote was as follows:

Aye—Mr. Kennedy.

Nays—Messrs. Brown, Cropsey, Gerard, Hawke, Hascall, Hilton, Metz, Sheldon, Thomas, Tucker, Tennant, Mr. President.

The PRESIDENT. Gentlemen, one member having voted in the affirmative and 12 in the negative, the objection is overruled.

Mr. ESTABROOK. With what object or intention did you make these two statements?

A. It was to help elect Governor Butler. It was at his suggestion. To make the Democrats understand that the money was paid in, so that he could be elected. I think the first statement I ever made was in his office, and I think it was written on letter heads.

Q. State what occurred in regard to that subject between you and the Governor at that time?

Mr. REDICK. I object to that.

Mr. ESTABROOK. I am asking all about this conversation.

Mr. REDICK. I object to that.

Mr. ESTABROOK. Now, I ask what was said between them. I do it as a matter of cross-examination.

Mr. MARQUETTE. We have had no right to cross-examine on this. This is new matter.

Mr. ESTABROOK. Not at all. I ask him what was the conversation between him and the Governor at that time?

A. I think this was at the time that—I cannot recall whether he sent for me or not. He wanted me to make this statement. The conversation was that those fellows were after him and he wanted to make a show that he paid this money in.

Q. Mr. Brock, at that time did the Governor pretend that he ever paid it into the State Treasury?

Mr. REDICK. I object. What's the use of putting it?

Mr. ESTABROOK. Decidedly pertinent and proper. I will ask you what he said in regard, or what profession he made in regard to having put that money in the State Treasury?

A. I could not say now. I know it was merely to blind people, and make them understand it was paid in.

Q. State what he has ever done in regard to desiring you to make a statement that he had paid interest upon that money?

A. After the statement made to the Superintendent of Public Instruction, Mr. Beall. In November, the papers published a statement, and the Omaha Herald "blowed" that the Governor had not made any account of this money, and the Governor wanted to know if I could not write to the Omaha papers and tell I had made an omission in my statement that the money had been paid. I told him I could not; that the statement was made from the books, and the people had a right to examine the books. If he wanted to pay the money in I supposed there could be a supplement.

Q. State whether Governor Butler offered you any pecuniary inducement; and if so, what, if you would make these statements?

A. No, sir, he never did.

Abstract of Title, Lots 1, 2, and 3, in Block 121, in Lincoln.

#### I.

Assumed that the State of Nebraska was seized of good title.

#### II.

Deed, Lots 1, 2 and 3.

Lot 1, 2, & 3. { State of Nebraska to Amanda F. Tichenor,  
 Lots 1, 2, and 3, in Block 121, Warranty  
 Deed, January 1st, 1869. Consideration,  
 \$1,000. Recorded book "B" of deeds 192.

#### III.

Deed, Lot 3.

Lot 3. { Anson C. Tichenor and Amanda F., his  
 wife, to Francis Longwith, Warranty  
 Deed, April 16th, 1870. Consideration,  
 \$950. Book "F," of deeds 194.

IV.  
*Mortgage.*

100 feet off the front end of lots 1 & 2.

Amanda F. Tichenor and Anson C. Tichenor to Thomas Bristol, May 2, 1870—100 feet off the front of lots 1 and 2, to secure a note for \$4,000, bearing 12 per cent. semi-annually; first failure all due; covenant to insure. Book "B," mortgages 245.

V.  
*Deed, Lot 3.*

Lot 3.

Francis Longwith and wife to Anson C. Tichenor, Warranty Deed, June 6, 1870. Consideration, \$1,500. Book "F," deeds, 492.

VI.  
*Mortgage, Lot 3.*

East half of lot 3.

Anson C. Tichenor and wife to Christopher G. Russ, Mortgage, June 15, 1870; east half of lot 3, to secure a note for \$1,800, 10 per cent. due in 6 months; discharged August 1, 1870, by C. C. Burr, alleged Attorney in fact for Russ.

VII.  
*Mortgage, Lots 1 and 2.*

Lots 1 & 2, 100 feet off front end.

Amanda F. Tichenor and Anson C. Tichenor to Thomas Bristol; June 6, 1870; Mortgage; 100 feet off front end of lots 1 and 2, to secure \$1,500 by note, covenant to insure. Book "B," mortgages, 390.

Title good, except incumbrances to \$5,500, and insurance to \$12,000.

[Signed] ROBINSON.

August 5, 1870.

Mr. ESTABROOK. Mr. Brock, will you state whether this is the document upon which you paid out of the school fund \$10,000 to Tichenor? Was it exclusively upon this, or was it upon other documents in conjunction with this?

Mr. MARQUETTE. He has a right to state that it was upon the applica-

tion of the Auditor and Governor.

Mr. ESTABROOK. You say it was upon this?

A. I say it was upon both.

Mr. REDICK. I object. [Objection withdrawn].

Mr. ESTABROOK. Was the State indebtedness taken up, or not?

A. My understanding was that the indebtedness was taken up.

Q. Are these the abstracts? (shows abstracts.)

A. Yes, sir.

Mr. REDICK. Why did you not testify before the investigating committee when first asked?

A. I testified then; after that I refused to testify.

Q. Did not you do that upon receiving a telegram from Mr. Sweet?

A. Yes, sir. Sweet telegraphed like this: "Do and say nothing before the Legislature until I come."

Q. Did the Attorney-General of the State examine and report upon the sufficiency of the security for the Tichenor loan?

A. I don't know. He did not bring the papers to me.

Q. You say that the report regarding the sufficiency of the Tichenor security was in the hand writing of the Attorney-General?

A. I think so.

Q. In acting upon applications for the loan of public money, were you not governed by the opinion of the Attorney-General?

A. Yes, sir, as to the incumbrances.

Q. Mr. Brock, what did Tichenor promise to pay you, if you secured this loan?

A. He never agreed to pay me anything.

Q. What did you get directly, or indirectly, from Tichenor?

A. I have received about \$650.

Q. To whose credit did that \$650 go?

A. I don't know that I will answer unless the Court insists.

Q. Well, I insist. We want to know who got the "soap?"

A. Well, sir, it went to my credit I got the soap.

Q. From whose account was this \$10,000 taken at the time the Tichenor loan was made?

A. I think from John Rix's. He was our heaviest depositor.

Q. Will you fix the time—day, month and year—that you had that conversation with Governor Butler, you speak about, in regard to his requesting you to make these statements?

A. It was along about the campaign in the fall of 1870.

Q. Don't you know that he was away from here almost all the entire time of the campaign?

A. I know he was away most all the time. I think Ambrose could tell about the time this conversation occurred.

Q. Did you have any conversation with Mr. Sweet yesterday, as to what you should swear to-day?

A. No, sir; I saw him, for he stayed with me; he talked to me about the matter; I don't know that he said anything about what I was to swear to.

Q. You have been a witness here before?

A. Yes, sir, I have been a standing witness for the last six weeks.

Mr. ESTABROOK. Did you state whether this abstract was filed in connection with this loan, before or after the loan was made?

A. It was filed at the same time all the papers were filed.

Senator HASCALL. After concluding your conversation with Governor Butler, in relation to the Trusteeship of the Board of Regents of the University, you state that you left under the impression that Governor Butler was to procure the position for you, and that you were to pay him therefor \$750. State what Governor Butler said, if anything, in the conversation, that caused you to leave with that impression?

A. Well, I could not say what he did say; it was to the effect that he would see McConnell, and see whether—we were in doubt whether McConnell would resign. My impression is, that he would see McConnell and do what he could for me; I know I went away with that impression.

Mr. REDICK. There is one question I have omitted that I would like to ask: Was the Governor present at the time you made out that published statement?

A. He was.

Q. Are you sure of that?

A. I am pretty sure.

Mr. ESTABROOK. When that proposition was made to Governor Butler, did he rebuke you in any way for offering that bribe?

A. No, sir.

Senator TUCKER. You said that you had a private box in which you kept most of the State money. Where did you keep the balance of the State funds?

A. Kept with the general fund of the bank.

Q. Did Mr. Sweet object to the use of the name of John Rix being used upon the books of the bank, in order to enable you to use the funds belonging to the State?

A. Never, to my knowledge.

Mr. ESTABROOK. State whether this \$17,000, or any part of it, was deposited in that department in which you deposited the State money?

A. No, sir, it never was.

Senator THOMAS. In your answer to a question put to you by the Managers, you said that you were under the impression that while in Omaha you paid a note of Governor Butler, out of the money (amounting to about \$17,000) which you received for the Governor. Now state to whom you paid that note, the amount of it, and by whom the note was made?

A. Well, that part is all guesswork from the beginning; but, my impression is, if I paid a note, I paid it to the First National Bank in Omaha, and the amount of it was about \$300.

Q. You say that after the three certificates were drawn the second time, and when the Governor had overdrawn his account, you sent for the certificates, and placed the money called for by them to the credit of the Governor. Now state to whom you sent for the certificates, and who brought them to you?

A. I think I sent my brother after them, and they were endorsed by David Butler. My brother was messenger for the bank.

Mr. REDICK. Didn't you state to McConnell that these certificates were dated back?

A. I never did.

Senator THOMAS. Did the Governor say anything about your placing

that money to his credit; and if so, state what he said?

A. I didn't have any conversation with the Governor at the time this deposit was made.

Mr. ESTABROOK. Will you state whether any interest was paid on that \$17,000?

A. No, sir.

Q. Did you reckon the interest in when you cancelled the certificates?

A. No, sir.

Senator KENNEDY. In answer to Senator Thomas' question, you state that the balance of the money was kept in the general fund. What do you mean by the general fund?

A. Well, in the terms of Mr. Redick here, the "general pot" where the money was kept.

Mr. REDICK. You do not understand the meaning of the "general pot?"

A. Yes, sir, I understand it. It was kept in the same place where our banking money was kept.

The PRESIDENT. Did James Sweet, as Treasurer, or did you, as his deputy, charge the State anything for expenses incurred for services rendered in bringing the money referred to by you as the \$17,000, from Omaha to Lincoln; and if so, what was the amount of such charge?

A. I never did charge the State anything. There is no entry on our books concerning this matter.

Mr. ESTABROOK. Did you charge any one anything?

A. I took out of the money—

Q. Did you charge any one anything?

A. Our books show I credited myself with \$33.75, expenses to Omaha for Governor Butler.

Q. Who paid you that amount?

A. I deducted it from the money I received, and placed the balance to the credit of David Butler on the books and certificates of deposit.

Senator THOMAS. Did the Governor, at any time, say anything about the placing of the \$16,881.26 to his credit; if so, state all that he said on that subject?

A. That is going back to the first question. I stated that he wanted three certificates of deposit, of \$5,000 each, and the balance placed to his credit.

Mr. ESTABROOK. You have given the time, I believe, when those certificates were returned?

A. Yes; September 12th.

Senator THOMAS. Did the Governor, at any time, say anything about you placing the \$16,881.26 to his credit?

A. He wanted the certificates of deposit placed to his account. His account was overdrawn, and, of course, we could not attempt anything of that kind. It was understood and talked of, that the certificates of deposit be placed to his account to balance it. And, if you will examine the certificates of deposit, you will see the words "or order" have been stricken out, that they need not be transferred.

Mr. REDICK. Was not that after he had concluded to borrow this money?

A. That was at the time he commenced overdrawing his account.

Q. Was not that after he had concluded to borrow?

A. I could not tell when that was done—

Mr. ESTABROOK. I give you notice, Mr. Redick, if you open this question of borrowing, we shall wish to take the witness.

A. I know that was what this was there for.

The PRESIDENT. You state that you did not charge the State anything in connection with the transfer of the \$17,000 from Omaha to Lincoln. Did James Sweet make any such charge, to your knowledge, against the State?

A. No, sir, he did not.

Q. Was this \$17,000 deposited to the credit of John Rix?

A. It never was.

Senator TUCKER. How long was it after you had got the money from Omaha before Mr. Sweet knew it?

A. I could not say. Mr. Sweet hardly ever asks any questions regarding our business here in the banking department.

Senator HASCALL. I understand the counsel to say they are through with the witness. I—

Senator TUCKER. Did you not know the money you got from Kountze's bank belonged to the School Fund?

A. I did not.

Mr. REDICK. With your permission, General Estabrook. You state that the money you— To whose credit did you place it before you put it into this general vault?

A. I never placed it to any other credit.

Q. When you counted it over, to whose credit did you then place it at that time?

A. The first credits I ever made, were on those certificates of deposit.

Q. Is that the best answer you can give?

A. That is all I can.

Q. There was an *interim*. To whose credit did it stand during that time?

A. It may have been in the satchel.

Q. The certificates are dated the 22d; you went about the 15th. I ask you to state to whose credit it went before the certificates were first issued; and you say you don't know, it may have been in the satchel. Is that your answer?

A. These were the first entries ever made.

Q. Do you remember the day of the week you got back from Omaha?

A. I do not. I would not swear. I can trace it down pretty close. If you want to know.

Q. I would like you to do so.

A. I think I left here Saturday afternoon; stayed with Roberts over night; went from there to Nebraska City on Sunday, and C. Woods was with me, the Auditor's clerk; I went to Omaha on Monday, I think; and I think I left Omaha Tuesday evening; and I think I left Nebraska City Wednesday; stayed all night with Roberts again, and got here Thursday noon. That is the impression.

Senator TUCKER. Do you swear you did pay any note out of the said money while in Omaha?

A. No.

Mr. ESTABROOK. Had you anything before the Committee of Ways and Means to remind you of that?

A. If you will give me my testimony, I can tell. Nothing in reference to the note. If I paid it, I paid it to the First National.

Mr. ESTABROOK. If you did pay it, state whether or not your bank account would still show that bank;

A. I don't think it would.

Q. Why not?

A. I think I first placed the net fund. The books show I credited myself with \$33.75 as expenses to Omaha.

Q. If it was short \$300 or more would not your entries show?

A. I have not anything to go on to show how much money I got at Omaha. I don't know whether I got \$16,881.26.

Q. Don't your books show?

A. No.

Q. Did not your books show the values of the three certificates deposited?

A. Yes, they show three certificates of deposit of \$5,000 each, and \$1,486.66 placed to the credit of David Butler.

The PRESIDENT. Are you in the habit of going after money for private parties when they pay your expenses?

A. No, sir.

Senator HASCALL. I move that the Senate sitting as a Court of Impeachment take a recess until 2 o'clock P. M.

The motion was put to the Senate and carried.

#### AFTERNOON SESSION.

Senate sitting as a Court of Impeachment called to order at 2. P. M. Roll called.

Present—Messrs. Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tenant, Mr. President.

Absent—Mr. Brown.

#### TESTIMONY OF JOHN GILLESPIE.

John Gillespie called and sworn.

By Mr. ESTABROOK:

Question. State what office you hold, if any?

Answer. I am Auditor of State; have been since January, 1866, up to the present time.

Q. Mr. Auditor, I want you to state to the Senate in relation to your duties; whether your books and records exhibit the fact of the payment of all the public monies belonging to the State?

A. When money is paid in, the Treasurer gives an original receipt to the party making the payment, and the duplicate comes to my office, either

by the party, or the Treasurer himself.

Q. It is then paid into the State Treasurer, before it appears on your books?

A. Yes, sir.

Q. Do you know anything officially about this five per cent. fund?

A. No, sir.

Q. Do you know anything about it as an individual; if so, what?

A. I have some knowledge of it, personally.

Q. Have you any knowledge of it after it reached Lincoln?

A. No, sir.

Q. Have you any knowledge of it from conversation with Governor Butler?

A. No, sir.

Q. State whether your books exhibit any such fund deposited in the State Treasury at any time?

A. They do not.

Q. State whether you know any thing about a loan, or a pretended loan, being made, to A. C. Tichenor and wife; and if so, state when it was and what were the circumstances connected with it?

A. There has been a loan made to Tichenor and wife. The first knowledge I had that Mr. Tichenor received a loan was noticing the fact stated in the *Omaha Herald*.

Q. State if you had any connection with it as one of the School Commissioners?

A. Mr. Tichenor made application to me, as one of the Commissioners, for the loan. I drew up a form of an application for Mr. Tichenor, and he took it and put on his own signature, and got the signature of his wife and asked me to put an endorsement upon the back of it, which I did. The application is in my own handwriting; and the endorsement is in my own handwriting. (The application is exhibited and the witness acknowledges his signature to the same.)

Q. Was there any meeting between you and the other Commissioners with regard to this subject?

A. No, sir.

Q. At that time, was the State indebtedness taken up, or in other words, was the condition upon which that loan was asked, complied with?

A. It was not.

Q. Then was your assent ever given for a loan to Mr. Tichenor?

Mr. REDICK. I object.

Mr. MARQUETTE. I am not going to object, if the object is for the witness to deny his own assent here; or is it for the witness to swear away his own assent? I can only show by law that it is not required that there should be a meeting of the Commissioners in a case like this.

Mr. ESTABROOK. Did you as Commissioner ever actually consent to any loan of the school funds ever made to Tichenor and wife?

Mr. REDICK. We will withdraw our objection to save time.

A. I did not.

Mr. ESTABROOK. Then, if you never gave any such assent, will you explain when, and under what circumstances, this endorsement was made?

Mr. REDICK. We will object to that.

Question reduced to writing.

The PRESIDENT. Gentlemen, the following question has been asked by the counsel for the Managers: "Will you, then, explain the endorsement made by you on the back of the application of Tichenor?" The question before you is, Shall the objection be sustained? As many of you as are of the opinion that the objection be sustained, will, as your names are called, answer "aye," and as many as are of the contrary opinion answer "no."

The roll was called with the following result:

Ayes—Messrs. Gerrard, Tucker, Tennant and Mr. President.

Nays—Messrs. Brown, Cropsey, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon and Thomas.

The PRESIDENT. Gentlemen, four members having voted in the affirmative and nine in the negative, the objection is overruled.

Witness GILLESPIE. I will state, that I put this endorsement on the

back of this application at the often-repeated solicitation of Mr. Tichenor. I worded it in such a way that he could not get the money. I intended he should never get it, and stated to him that I thought he would not.

Q. State what you said in that endorsement?

A. I stated in the endorsement that the loan should be made when the outstanding indebtedness of the state was provided for.

Q. Will you state whether that outstanding indebtedness was ever provided for?

A. No, sir; not in the meaning I intended it.

The following endorsement on the application of Anson C. and Amanda F. Tichenor, was offered in evidence and read:

OFFICE STATE AUDITOR, }  
LINCOLN, July 21st, 1870. }

Hon. JAS. SWEET, Treas.

Dear Sir:

You will please loan to A. C. & A. F. Tichenor as an investment, School Funds to the amount of Ten Thousand (\$10,000) dollars, when the outstanding indebtedness will have been provided for, and the School Funds in your hands will justify the same.

—Governor,  
—Treasurer

(Signed) JOHN GILLESPIE,  
Auditor.

Mr. ESTABROOK. Did you ever know when any loan was made?

A. I did not know at the time.

Q. State whether you ever had any conversation with any other of the Commissioners on the subject of that loan at all?

A. I do not remember of any.

Q. State whether you ever had any conversation with Governor Butler about it at any time?

A. I have not.

Q. State what you know about a contract being let to one Joseph Ward for the erection of the Lunatic Asylum and state when it was, and all facts connected with it?

Mr. REDICK. I think we admit all that in our answer to the fourth article.

Mr. ESTABROOK. Go on, and state what you know about it?

A. There was a contract entered into by Joseph Ward, as contractor of the Insane Asylum, the date of which I cannot remember now.

Q. Well, about when? Was it embraced in your report?

A. It is embraced in our report; there was an advertisement issued by the Commissioners for bids; the bids were received on a certain day; the contract was awarded to the lowest bidder; Mr. Ward was the lowest bidder, and consequently received the contract.

Q. What was his bid?

A. One hundred and eighteen thousand and some hundred dollars; I cannot—

Q. For what branch of the work?

A. The superstructure above the foundation; you will see the amount in our report.

Q. Will you state, Mr. Gillespie, what connection Governor Butler had with the letting of that contract, and the progress of the work under it, as Commissioner?

A. Governor Butler was one of the Commissioners who awarded the contract; he signed the contract; he was Commissioner during the progress of the building.

Q. What was the amount appropriated for the erection of the building, at the time the contract was let?

A. The amount appropriated by the Legislature was \$50,000.

Q. And the whole amount?

A. One hundred and thirty-seven thousand and some odd dollars; see our report.

Q. State the facts in connection with the progress of it, as far as the building of the basement was concerned; when was the basement made?

A. The basement? The contract was let out and the work mostly done in the fall of 1869.

Q. What was the price?

A. The contract for the basement was eighteen thousand some odd dollars.

Q. What amount, then, was expended during the performance of that part of the contract?

A. I would have to refer to my books, to give it correctly.

Q. Will you state, then, Mr. Gillespie, how much there was expended

upon that \$18,000 contract during that winter?

A. I find, from my ledger—

Mr. REDICK. I wish to object on the ground that it is calculated to mislead the witness. In this, that the books may show that a larger amount than \$18,000 was paid. It must be borne in mind the work was still going on and would apply on the superstructure.

Mr. ESTABROOK. Now I ask the witness how much money is shown by his records is drawn out upon the estimates of the Governor and others, upon that contract?

A. The only answer I can make is to refer to my book. Up to September 1868, there are \$47,400 drawn upon that contract.

Q. State whether he had any other contract except building that basement—any other State contract?

A. He afterward received the contract for building the superstructure. The contract for the foundation was just let in order to get the foundation in that fall. Sometime afterward the contract for building the superstructure was let, and Mr. Ward had both contracts.

Q. State whether your books show, upon which contract estimates were made and money drawn in each case?

A. My books do not show.

Q. Was the amount mentioned, drawn out before the other contract was made?

A. No, sir.

Q. State whether you had any conversation during the progress of this work, upon these expenditures, and what that conversation was?

A. I frequently had conversations with Governor Butler and the other Commissioner when these estimates came before us.

Q. Did you ever have any conversations touching the fact that the money was drawn out faster than the work progressed?

A. I have stated to Governor Butler upon several occasions that Ward was drawing too much money. The first conversation I remember now of having with the Governor, I went to him and asked him if Ward had given

bonds, and stated that in the absence of his having given bonds, I thought he was drawing too much money. At another time, I protested against him drawing any more money, until he did give sufficient bonds. The Governor stated to me that he would give bonds, and stated to me at another time when I protested against paying any more money upon his estimates, that Ward was drawing up his bonds at that time, and gave me the names of the parties who were going on his bond; and in answer to my objections, said it would be all right; for me to go and pay the money on the estimates.

Q. State whether Governor Butler was building a House at the same time, of which Ward was the contractor?

A. I believe he was.

Q. State whether Ward ever gave bonds at all?

A. I believe there was one with two, or three, or four names upon it.

Q. How much money was drawn out of the Treasury and paid upon that estimate?

A. The total amount drawn upon the building is \$137,355.

Q. State whether he ever gave any bonds for the whole or any part of that contract?

A. There was a form of bond drawn up, and I think some names attached to it. The Governor was to approve the bond.

Q. State whether the bond was ever given and approved?

A. No, sir.

Q. Do you know it from anything you have learned from the Governor?

A. No, sir.

Q. Where would it be deposited?

A. I think it would be deposited in the State Treasury Department.

Q. Had you any conversations from time to time with the Governor with regard to this bond; and if so, what did he say?

A. Yes, sir, I had. I did not believe Mr. Ward would give bond, and the Governor, in reply to the question if he had, replied that he had not, but that he would. I stated my doubt as to his ability to give bond, and the Governor named over a number of good men whom he hoped to get on it. But the parties that he mentioned



except one or two, never went on the bond.

Q. How far had the work progressed when the bond was made?

A. I am not able to say. It was sometime after the letting of the contract and the paying of money on it.

Q. What amount of money had been paid at that time?

A. I am not able to state how much had been paid at that time, but it was a considerable amount.

Q. State what you know about letting the contract for building the State University?

A. The appropriation made was \$150,000. The contract price on the building was \$152,000, allowed by the Commissioners.

Q. State what you know in regard to the issuing of patents of State lands to the Sioux City & Pacific Railroad Company by Governor Butler; when it was, and the circumstances connected with it?

A. I am not able to give the date, nor able to state that patents were issued, except that Governor Butler told me he had issued them. There was an application made by John I. Blair, sometime in the fall of 1869, for seventy-five sections of land. Mr. Blair came to Lincoln and requested an interview with me as one of the Commissioners. He was accompanied by J. T. Davis and General Bowen. I had a conversation with them in the Governor's office. The Governor and Secretary were present. Mr. Blair stated that he had a business transaction to bring before the Commissioners.

Q. What were they after?

A. They wanted seventy-five sections of land donated to the Nebraska Air Line Railroad. They set forth that the Nebraska Air Line Railroad was consolidated with the Sioux City and Pacific railroad, and asked the Commissioners that the lands might be by them selected and patented to the Sioux City and Pacific Railroad. Mr. Blair had a selection of lands with him, and asked its approval. I examined the selection and refused to approve it, and did not.

Q. At what time was this?

A. The interview was in the afternoon; at what hour I do not remember; and then again in the evening, at the request of Mr. Blair, we had an-

other interview, at which the Governor, Secretary and myself were present; and also John I. Blair, Jesse T. Davis, and General Bowen. Mr. Blair again set forth his claim, asking that those lands might be appropriated to the Sioux City and Pacific Railroad; urged them very strongly, and not hearing them, I refused to approve the list. And I stated my reasons, at the time, for not approving the list, to the Governor, who was present. I took the position, that approving the lands to Mr. Blair would be unjust to other railroads; that those were a good class of lands he was asking for. The lands were valuable—valuable on account of their location, and that he was not entitled to first-class lands. I took the position that the lands ought to be classified, and that I, as Commissioner, could not consent to give Mr. Blair his first choice of lands; it would be unjust to other railroad companies, and other localities. In connection with that, I stated to the Governor that my idea, as a Commissioner, in selecting lands for railroads, was to first classify and then grade the lands; that some lands lay in some counties settled, and others in the interior, consequently some were more valuable than others, and in order to be just, we should have to give all an equal proportion.

Q. State what the point at issue was between you and the Governor?

A. The Governor seemed to agree with me in that position; that that was the proper way to dispose of those lands.

Q. Had you any understanding between you as to your course; if so, state it?

A. The Governor agreed that was the proper course, and afterward agreed with me we would have to pursue that course in order to do justly with all, and not be censured by any railroad corporation. I requested the Governor's concurrence, because I could see there would be a difficulty arise. The different railroads would be applying for different lands, and in order to pursue a fair course, treat all on the same principle, we would have to adopt that plan, in which he concurred. I asked him, if I remember right, whether he would approve that

list. He gave me to understand he would not.

Mr. REDICK. What did he say; that is the question?

A. As near as I can recollect I asked if he would approve of that selection of Blair's, and whether he thought it right and just; and he said he did not think it was. He led me to believe he was not. Afterward I learned that patents were issued. I do not know who approved the lists.

Mr. ESTABROOK. Did you have any conversation afterward upon the subject?

A. Yes. After I learned patents had been issued, Governor Butler called me to his office, and asked me in relation to the announcement made in the Omaha papers concerning that approval of the list of lands, and why, I, as a State officer, allowed the statement to be made in the Omaha papers. I denied making the statement. He intimated to me that I had published an article that appeared in the *Lincoln Statesman*, edited by one A. F. Harvey. I stated Harvey had written that editorial himself, and he was responsible, and the Omaha papers got the information from Harvey's article. He was out out of humor, and there were some angry words passed between us about this transaction. As I stated, he accused me of writing the article, and I denied it. I stated to him that I had said—

Mr. ESTABROOK. That is not material unless there is some occasion. I want to know what he said he had done in regard to issuing of the patents?

A. During this controversy between him and I, I asked him if he had patented the list of lands that Blair asked for; he said he had not, but had changed the list somewhat. I asked him, then, if Blair had received his patents, and he said he had. I stated, in connection with that, that if he had, it was an outrage. I said so at first, and I still say so. The Governor was out of humor and so was I. I asked the Governor, then, to furnish me with a list of the lands patented to Blair. He said he would furnish it. In the meantime, I had got from the Governor's private secretary a list of the lands asked for by Blair, and

marked them on my map in blue pencil; and soon after this conversation with Governor Butler, he brought me a copy of the patent, in which the numbers were specified, and I asked him to call them off. I called them off and he examined the lands marked on the sectional map, and they were the same.

Q. How many sections?

A. Seventy-five.

Q. Was that all the conversation you had with him?

A. That was the purport of the conversation.

Q. Was there any question raised during your discussion in that Board as to whether that road had been consolidated with some other road, which was entitled to these lands; if so, state what was the discussion?

A. The purport of the document was to show that the consolidation of the Air Line and Sioux City & Pacific railroads had been effected.

Q. By virtue of such consolidation, the lands appropriated to the Air Line were due the Sioux City & Pacific?

A. I suppose so.

Q. Did you have a discussion of the matter with the Governor?

A. I don't remember.

Q. Did you ever issue Col. C. S. Chase any warrants as money due him for services rendered the State; if so, please give the date?

A. There was two warrants issued for \$1,000 on February 13th, 1869. The numbers of these warrants were 1343 and 1344.

Q. Under what law were these warrants issued?

A. In accordance with the act of February 9th, 1869.

Q. At whose solicitation or direction were these warrants issued?

A. At Governor Butler's.

Q. State the occurrence.

A. One day, Governor Butler came into my office and made out the accounts of C. S. Chase, Attorney for the State; one for the year 1867, one for 1868. He approved these and requested me to issue two warrants, one for the year '67, one for '68. I made out the warrants, and the vouchers for the warrants were made out in the name of C. S. Chase. The Governor wanted these warrants made out, and said he would take them with him.

He was going to Washington, and he would take them as far as Omaha and leave them with Col. Chase.

Q. Well, let us know all about it?

A. Sometime after this, the vouchers for the warrants not being returned, I requested Mr. Woods, a clerk in my office, who was going to Omaha on a visit, to call on Col. Chase and get the vouchers. He did not get them. I spoke to the Governor several times about these vouchers, and requested of him that the matter might be fixed up, in order that the vouchers might be on file in my office.

Q. What did he say?

A. The Governor stated to me that the thing was annoying him considerably, and he had considerable trouble about it; and, on another occasion he said that he was going to have one of the warrants returned or cancelled.

Q. When was this other occasion?

A. Sometime during the year 1869.

Q. State whether it was at or about the time of the holding of the special session of the Legislature in 1870?

A. It was previous to that.

Q. How long was it previous to that?

A. I don't remember.

Q. State whether these warrants, or either of them, was ever cancelled?

A. One of them was cancelled and destroyed.

Q. How do you know?

A. Because I saw the warrant in the hands of James Sweet. He brought it to my office and stated to me that Governor Butler had paid him \$1,000 in lieu of that warrant. I examined the warrant and then he destroyed it.

Q. What was the number of that warrant?

A. No. 1,344.

#### CROSS EXAMINATION.

By Mr. REDICK:

Question: These contracts let by the Commissioners, were they jointly for the Asylum and University?

Answer: Yes, sir.

Q. You stated, I think, that before December, — that is, when the \$47,000 was paid to Mr. Ward, — the contract had been let to him for the superstructure; did you so state?

A. Yes, sir.

Q. All the monies you speak about protesting against Ward receiving be-

fore giving bond, were paid by yourself?

A. The warrants were drawn on the Treasurer.

Q. The warrants were drawn by the Commissioners?

A. Yes, sir.

Q. And you say you was one to help to approve these warrants?

A. Yes, sir.

Q. When the articles of consolidation was brought in—

To Mr. ESTABROOK, (who had stepped between Mr. Redick and the witness): See here, I cannot see through your body, but I can through your head.

Mr. ESTABROOK. It is clearer than your head, for I can't see through it; it is too much muddled.

Mr. REDICK. Don't you remember of the Attorney-General being called in to help decide upon the validity of the articles of consolidation of the Air Line with the Sioux City and Pacific railroad?

A. I cannot say; to the best of my recollection he was not.

Q. At the time the warrants were drawn for Chase, Governor Butler told you he had approved them?

A. Yes, sir.

Q. And he stated afterward that he had concluded not to allow them?

A. Yes, sir.

Q. And that he would appoint another man Attorney-General?

A. I cannot state.

Q. Does it not frequently occur in approving lands for railroad grants, you differ in opinion as Commissioners,—two of you agreeing, and one dissenting?

A. It has occurred once or twice.

Q. Didn't it occur very lately, where you and Mr. James approved a grant that the Governor did not approve?

A. Yes, sir.

#### TESTIMONY OF C. S. CHASE.

Colonel C. S. Chase was called and sworn.

By Mr. ESTABROOK:

Question. Mr. Chase, will you state what is your residence and profession?

Answer. I reside in Omaha, and by profession am a lawyer.

Q. State whether you was, at any time, the Attorney for the State of Nebraska; and if so, when it commenced and when it terminated?

A. I was Attorney for the State, and Acting Attorney-General from sometime in August, 1867, until some time in April, 1869.

Q. State whether you had, at any time, any conversation with the Governor in regard to your salary; and if so, what it was?

A. I had; during the session of the Legislature of 1869 I had one or two conversations in regard to what my pay would be, and in talking in regard to it no sum was named particularly; but there was a bill about being introduced to confer upon me the duties of Attorney-General, until one should be appointed, in addition to those as Attorney for the State; about the time that bill passed, there was introduced a bill creating the office of Attorney-General for the State; and it was thought best to be somewhat guided by the salary fixed in that bill for my pay; and that was the understanding I had with the Governor; about a week afterwards, the bill creating the office of Attorney-General of the State, passed; the bill finally passed with a salary in it of \$1,000, though, I think, during the stages of progress \$2,000 was named; I left Lincoln about that time, supposing I was to be appointed Attorney-General of the State, under the new bill—do you wish me to go on any further in regard to my pay?

Mr. ESTABROOK. Go on—state fully.

A. I went home to Omaha, and I think a week or two after that Governor Butler came to Omaha on his way to Washington, and came to my house, or I took him to dinner. The subject of my pay came up, and he said: "Colonel, I can let you have \$1,000 now, but I am on my way to Washington, and I shall need the money, and would like to use the rest till I return." I made no objection. The next I heard was about two months after that. About the middle of April I received a note from the Governor stating he had appointed Seth Robinson Attorney-General. The next that occurred was, as near as I can recollect, the fore part of the summer of 1869. Mr. Woods, then Mr.

Gillespie's clerk, came to Omaha, and came to my office; and, as I recollect it, although I may be mistaken in regard to this matter a little, because I am told by others that I am. It was this in substance, that occurred: Mr. Woods came to my office, and presented me with vouchers, or asked me if I had signed those vouchers. I asked what vouchers? He said two for \$1,000 each for my salary as Attorney-General. I did not say much to Mr. Woods. I merely remarked I was going to Lincoln in a few days and would see Mr. Gillespie. It occurred to me there might be a mistake. I went to Lincoln soon after and found Mr. Gillespie, and asked him how it happened. At Omaha the Governor presented me with a draft or certificate of deposit, on which I drew the money at the First National Bank. I told Gillespie I had been asked to sign two vouchers for \$1,000 each. I asked what it meant. He said the Governor had allowed me that amount as my salary. He asked me if I had received any money. I said only \$1,000. I told him there must be some mistake about the matter; that that amount would not be due me according to the time I had served; it was more than I was entitled to. He asked me "How so?" and I told him if I drew the pay up to the time Mr. Robinson was appointed, that amount would not be due. He asked me if I would sign a voucher for \$1,000, and I did so soon afterward.

I told him he had better see the Governor in regard to the matter and have the matter straightened up. He said he would do so, and I then, or soon after, saw the Governor myself with regard to it, and stated that two vouchers had been presented me, for a thousand dollars each, and suggested there must be some mistake about it, and I did not see any other way than for him to return \$1,000. He said "if there has been any mistake about anything, I will make it right". The first I ever knew there had been warrants for \$2,000 drawn, was Mr. Woods presenting me the vouchers to sign in Omaha.

Q. How long from the time that warrant was drawn, was it until it was cancelled?

A. I dont know, I never saw either of the warrants.

Q. How long was it after the first warrant was drawn until these vouchers were presented to you to sign?

A. My recollection is about four months; think I was in Lincoln here, the next week. I gave the Governor authority to get the money due me and bring or send it to me at Omaha.

Q. Was there anything said when the Governor called on you at Omaha about your being appointed Attorney-General?

A. I am not very certain regarding that matter. We were a little more anxious about that time as to who was to be the United States Senator. I recollect his saying there would be no appointment made until he returned from Washington; nothing of consequence was said at that time about the appointment of Attorney-General that I recollect of.

Was there anything said about the amount he had drawn out for you?

No, sir; not a word.

Q. Was there anything by which you were given to understand that he had drawn more than he had given to you?

A. There was a remark which led me to suppose there was more drawn. I only know from examination of the Treasurer's books what finally became of this warrant upon which I did not draw the money.

Q. How much was due you?

A. If I received pay up to the time I received notice of my being superceded, in April, it would be something like \$650. There was due me up to the time the bill creating the office of Attorney-General was passed, \$485. This was in addition to the thousand dollars. I got the balance due me besides the \$1,000. It was paid me by the Auditor, and I signed a separate voucher, and filed my account, made out regularly.

#### CROSS EXAMINATION.

By Mr. REDICK:

Question. You stated that when the Governor paid you \$1,000 in Omaha he said he would fix it with you when he came back from Washington?

Answer. Yes, sir.

Q. Was not you led to believe from

that that he had the balance of your money with him?

A. Yes, sir.

Q. Did you understand that he wanted to enter land for the State at Washington and was hard up for money? Do you remember his saying something about the Saline lands he wanted to pay for?

A. I don't remember it.

Q. When the Governor came back and appointed Seth Robinson Attorney-General, did not he allow your account?

A. Yes, sir. I presented my bill and it was allowed, some time after.

#### TESTIMONY OF THOMAS F. HALL.

Thomas F. Hall was called and sworn.

By Mr. ESTABROOK:

Question. State whereabouts you reside?

Answer. In Omaha.

Q. State whether you ever had any conversation with Governor Butler in regard to the lease of certain Saline lands in the State of Nebraska; and, if so, state what that conversation was?

A. I had such conversation several times. The first time I came, the Governor told me that I could have some lands if I could find any that would suit me not already taken. I selected a piece west of the town site, but he said it was already engaged. I afterwards came to Lincoln and selected a piece east of Mr. Tichenor's, and asked him if we could get a lease of it; and he asked me how much I would give to obtain that lease? He first said, that was most too good a piece for any one man to have; I told him I would be willing to double the royalty asked by the State, which was one cent on the bushel, I think; but he said that was altogether too high now, and that he was going to have it cut down one half at least. He said he had been offered \$5,000 for that lease and would not take it, but as we had been here several times, and meant business he would let us have it for that amount. He said he would give that amount, \$5,000, for it if he was not Governor of the State.

Q. What did he say in regard to that bonus of \$5,000?

A. I have stated all I could tell about it. There was no conversation in regard to that at all.

Q. Was that all the conversation you had with him?

A. That was the substance of it all.

Q. State whether you ever had any subsequent conversation with him about the lease of that land?

A. He came up to my office one day and said the land was not yet leased, and said he would give it to me; but he desired me to take other parties in with me; that he had kept it for me, and intended I should have it when leased.

Q. Is that the only conversation you had in regard to the lease of that land?

A. That was the substance of it all.

Q. State whether, during the last campaign, Governor Butler asked you to contradict a statement made by the *Herald*, in regard to the proffer you made to him?

A. Not in regard to the \$5,000. This conversation about the lease being reserved for me, was during the last campaign.

Q. Did you have a conversation with Governor Butler during the campaign in regard to the publication in the paper, in which he asked you to explain the statement made to you?

Mr. REDICK. I submit whether that is a proper question. You cannot put questions in the mouth of the witness, and have him spew it out to suit you. If he had a conversation with David Butler, the only fair way is to ask him what he said. Let us have a fair examination. Gen. Estabrook knows that as well as I do.

Mr. ESTABROOK. I ask him whether he had a conversation touching a certain subject, and what occurred. Did you have a conversation with Governor Butler during the campaign, in regard to a conversation explaining your interview?

A. I think he asked, one evening, why I did not contradict the statement made by the *Herald*. I said I did not think the statement would be believed,

and it would probably make more talk.

Q. When he stated to you that you could still have it if it was not leased, did he state again the terms upon which you could have it?

A. No.

Mr. ESTABROOK. That is all.

#### CROSS EXAMINATION.

By Mr. REDICK :

Question. At the time you first came to Lincoln and conversed with David Butler in regard to this lease, in which the \$5,000 was mentioned, did he not state to you at that time that other parties had commenced to work the lots and offered \$5,000 for the same?

Answer. No.

Q. Did he not state to you that he had leased it to Cahn & Evans?

A. No.

Q. Don't you recollect he told you he could not lease that land until he could see other parties interested in it?

A. No.

Q. State whether you ever read to David Butler a letter, at any time, asking whether he had seen parties interested in that lease?

A. Not that lease, but another piece of land; and I have the letter in my pocket which he answered.

Q. Mr. Hall, was not this land you wanted right in between Tichenor and two others?

A. Yes.

Q. Did you know the shape?

A. I could if I saw the map. We had not designated what shape it would be. I only wanted a portion of it.

Q. Don't you know that the brine ran off one of the south lots into that tract?

A. Yes.

Q. Was it not that the brine ran off the one he said Cahn & Evans had?

A. I know it was.

Mr. REDICK. That is all. Stop a minute, I want to ask another question.

Q. Was Mr. Robinson, the Attorney-General, in the office at the time you had the conversation?

A. I think there was no one but Mr. Crowell and the Governor and

myself. He may have been there, but I don't think he was.

TESTIMONY OF C. C. CROWELL.

C. C. Crowell called and sworn.

By Mr. ESTABROOK :

Question. What is your name, occupation and place of residence?

Answer. C. C. Crowell, grain buyer, Blair.

Q. State, Mr. Crowell, whether you ever had any conversation with Governor Butler in regard to lease of saline lands, and what conversation that was?

A. I was only a listener.

Q. State if you ever heard any?

A. I heard considerable. There was a great many times we were in and out of the office, and I cannot tell—

Q. With whom was the talk?

A. With the Governor and Mr. Hall.

Q. State what conversation you heard in regard to the lease. State the first conversation?

A. In the first place, we wanted to get a lease, and we figured around some time to show we were responsible parties. Finally, that was satisfied. He told us to go out and select something; he would give us anything not taken. He sent us some four or five miles. I do not know the points of the compass here. It was about Tichenor's place, the one Tichenor was using then; and we could not find anything to suit us. Finally, we got a man named Gregory, who showed us a large tract of land, which he said was desirable. We did not know how to make the salt. We showed the Governor what we picked out. It was adjoining the town plot, I believe, and he made some objection to it. One thing he said—he would like to save that place, it was desirable for putting up evaporators, in case parties, who wanted to bore for salt, did not find it, and they might possibly try there. He told us to come again. We made another trip, and I don't know, I believe, that was the second trip just related. The first time we went, we concluded there was nothing around. We made three trips. However, the last time we picked it out; the Governor I think

did not help us, but when we did, I am very confident he said it was free. He wanted to know what Mr. Hall would give for a lease of the land, and Mr. Hall said he would double the royalty. The Governor made some remarks as though it was not necessary to do that, as he thought it was too high already. Finally, the Governor said he had been offered \$5,000. He said he would give \$5,000, and that sort of talk. Mr. Hall turned around to me. Whether he said anything to me, I don't know, but he asked the Governor "will a thousand dollars buy it?" The Governor shook his head and said "no." After that we did not stop any longer.

Q. When you first came into the presence of the Governor state whether you had any conversation as to the terms prescribed by the law under which he was acting?

A. I think there was something said about it.

Q. What do you mean by the "royalty?"

A. The per cent. we were to pay the State for the lease.

Q. Did you understand from the Governor that that matter was fixed by law or by his own volition?

A. I understood it was fixed by law, from the reason that he wanted it changed.

A. Did this \$1,000, or the amount asked for the lease, have any reference to the royalty?

A. I expected we would have to pay the royalty also.

Q. Was this, then, a bonus that the Governor wanted, in addition to the royalty?

A. I don't know. I am not sure that he spoke of the State in the matter of the money. I did not know whether he had any right to ask the money or not.

CROSS EXAMINATION.

By Mr. REDICK :

Question. Don't you recollect that the Governor told Mr. Hall in that conversation that he, himself, had become responsible to certain parties, in case they failed to get a good well, to the extent of \$4,000 or \$5,000?

Answer. I recollect that he said he was connected with some gentle-

men in this. He said he was responsible to a certain extent.

Q. Will you be kind enough to fix the time of that conversation?

A. I think the last conversation was in July. I think the second trip I made here was the last of May or first of June; I will not be certain.

Q. You are sure the conversation took place in May?

A. I am sure.

Q. Was it not in April?

A. I am confident it was not; it might have been the last day. I can't swear about the second trip. I am clear in my own mind about that trip; but I think the conversation was had about the land when I was down here the last of May or the first of June.

Q. You then went home, you and Hall. Did you ever come back after that?

A. Yes, sir.

Q. When?

A. I think in July.

Q. Not until then?

A. I think not.

Q. Will you swear to that?

A. I am not sure.

Q. Don't you remember that the Governor showed you how the brine ran down off the other pieces on to this tract?

A. Yes, sir. It ran off, I think, on to the last piece we picked out.

#### TESTIMONY OF SETH ROBINSON

Seth Robinson called and sworn.

By Mr. ESTABROOK:

Question. What is your name, residence and occupation?

Answer. Seth Robinson; reside in Lincoln, and am a lawyer.

Q. State whether you were late Attorney-General of Nebraska?

A. I was.

Q. Say whether you were consulted in regard to the loan by Governor Butler of a sum of money to Anson C. Tichenor and wife?

A. I don't remember any conversation with the Governor. Mr. Tichenor either came to my office, or sent to me an order from the Governor to make out an abstract of title for him, and I did so, and delivered it to Mr. Brock.

Q. State whether that is the abstract?

A. That is my writing and I think it is the abstract.

Q. The one that you furnished?

A. I think it is.

Q. Do you know when that loan was made?

A. I only know from what I understood from Mr. Tichenor, that it was made just after I got up the mortgages.

Q. Do you know just when it was made?

A. I know the loan was made about the time I drew the papers.

Q. Say whether before or after the furnishing of this abstract?

A. It was made after.

Q. When was this furnished? It is not dated?

A. It was furnished before I drew up the mortgages. I could not give the date.

Q. What did you do with this abstract after you made it out?

A. I delivered it to Mr. Brock in his banking office.

Q. Had you any conversation with Governor Butler in regard to that loan?

A. I think I had.

Q. Was it about the time the loan was made?

A. To the best of my knowledge and recollection I think it was about three or four days after I made out the mortgages.

Q. State the circumstances connected with that conversation?

A. I came up here to the Capitol, and went into the Governor's office to ask him about it. I told him I thought the security was rather shaky; but he replied to me that he thought it was very good. I told him I had not approved the security, he remarking at the time that he wished no loans to be made, where I looked up the abstract of the title, unless I approved of the security.

Q. You say you said the security was "shaky"; what were the facts about that?

A. The property was heavily mortgaged. That is all I know.

Q. Was it, in your opinion, good security for a loan of \$10,000?

A. I thought not. I understand the policies of insurance are cancelled.

Q. You think the policies increase the value?



A. Yes.

Q. Did you see the policies?

A. No; they were not made out at the time I delivered the abstracts.

Q. Did you ever recommend this loan to Tichenor by Butler?

A. No, sir, I did not. I was not consulted personally by the Governor, or any one.

#### CROSS-EXAMINATION.

By Mr. REDICK:

Question. You were simply ordered to look up the abstract of title?

Answer. Yes. I suppose the order came from Tichenor. I did it by virtue of my office for the State.

Q. That you have done?

A. Yes.

Q. Then, three or four days after that, you went to the Governor's office, and had this conversation in which he told you he wanted you to make no loans. You approved them?

A. Yes.

Q. Do you not recollect that at the time this loan was being made, there was a talk about the property being made to the State?

A. I considered it better with the policies for insurance. I knew they always reserved the right to cancel the policies.

Q. Did you know, at that time, the amount of liens against the property?

A. I think I remember the abstract shows \$7,500, besides covenant to insure.

Q. Take the abstract and see if you are not mistaken in the amount?

A. Yes, I am mistaken. It is \$5,500.

Q. Now what did you consider the property worth at the time the mortgage was taken, with the new house on it, the one that fell down?

A. My judgment would be \$22,000 or \$23,000.

Q. Now, then, together with \$12,000 of insurance, would not you think it good security for \$10,000?

A. As it stood, I would.

Q. The only contingency, then, was that the policy of insurance might be cancelled?

A. Yes, and the house burned.

Elam Clark was called as a witness, but did not answer to his name.

Manager PORTER. As Mr. Clark is absent, we will, by the permission of the Senate, put Mr. C. C. Crowell upon the stand. Perhaps we may prove by him what we expected to prove by Mr. Clark.

#### C. C. CROWELL RE-EXAMINED.

By Mr. ESTABROOK:

Question. Do you know anything about the condition of the Sioux City & Pacific Railroad at the time the patents were issued for their lands?

Mr. BRIGGS. Mr. President: This gentleman says that he knows nothing about railroads. He is not an expert.

Mr. ESTABROOK. The law requires that when patents for lands are granted to railroads, it must be shown that they are in good repair, good condition, good running order. Now we imagine it does not take an expert to show whether a rail is misplaced, or a bridge down.

Mr. REDICK. Do you mean to show that this railroad was not entitled to their lands because the road was not in good repair? We will object to the question.

Objection withdrawn.

Mr. ESTABROOK. State whether you know the condition of that road?

A. I think it was in poor condition to run regularly. I was running a flour mill within a mile of the foot of this "plug" road, as it is called, and they always had to go down first and see if the road was safe to put an engine upon. I deemed it dangerous. They did not run a train over the road regularly.

#### CROSS EXAMINATION.

By Mr. REDICK:

Question. Mr. Crowell, was you ever along the road between Blair and Fremont?

A. Yes, sir.

Q. It was in good condition was it not?

A. Yes, sir, it was in good condition when I went over the road. The

"plug" was not as good a road as between Blair and Fremont.

Q. How was the travel on the road—how would it have been between Blair and DeSoto?

A. There was not much travel.

Q. Was it not good enough to accommodate the travel between these points?

A. No, sir. I don't think it was safe enough for me.

Q. Well, how would it do for a common fellow like myself, or the other counsel here?

A. I think it was probably good enough for you, but not for me.

#### TESTIMONY OF WILLIAM F. GOODWELL.

Wm. F. Goodwell called and sworn.

By Mr. ESTABROOK:

Question. What is your name and place of residence?

Answer. William F. Goodwell. I reside in Burt Co., Nebraska.

Q. Do you know anything about the condition of this road, called "the plug road," between Blair and DeSoto?

A. I have been along near a part of it, so that I could see it. It looked like a very poor road. The portion I saw, I would not consider safe.

#### TESTIMONY OF SENATOR CROPSEY.

Senator CROPSEY (standing in his place) was sworn.

By Mr. ESTABROOK:

Question. State whether you have had any negotiation with Governor Butler with regard to any lots in the city of Lincoln; and if so, what it was?

Mr. REDICK. Now, General, you know that is not a proper question.

Mr. ESTABROOK. State the conversation and transaction?

Answer. The Governor sold me the six lots referred to in Article II. Specification 1st.

Q. Where did you first converse with him about them?

A. I was over by where I was building my house, and the Governor came there, I think, and I told him I wished to buy those lots, and he told me that he could sell them to me, and we had some considerable talk about

the price. I told him I thought the price was too high, but I finally told him I would take them.

Q. State what lots they were?

A. The lots named in the specification referred to.

Q. From whom did you take the title for those lots?

A. From the State.

Q. What was the price paid?

A. I think it was \$2,400.

Q. Paid to the Governor?

A. Yes, sir.

Q. Did the Governor claim that the title to those lots was in himself at the time?

A. I don't think he did.

Q. Did he make any explanation as to the condition of the title?

A. I don't think he did; the title was in the State.

Q. What was the nature of the deed you got?

A. It was an ordinary State deed.

Q. What was the consideration expressed in the deed?

A. Well, the deed shows; I think it was \$1,000.

Q. Why was that fixed? Was anything said by the Governor about that consideration?

A. There was nothing said to me about it; we had been in the habit of buying lots and getting deeds directly from the State; I thought it was straight.

#### CROSS-EXAMINATION.

By Mr. REDICK:

Question. Had you not reason to believe, and was not that your understanding, that the title did rest in Governor Butler for those lots?

Answer. Well, sir, I don't know that I even thought of it at that time.

Q. Was not that the practice, to buy the property from Governor Butler, and take the title from the State?

A. I think so.

Q. Did you not sell property in that way, yourself, for him, as the Governor's agent?

A. It was so sold in the land office down here, when I was there; that was the practice.

Q. When you bought those lots, didn't Governor Butler tell you, in discussing the price of the lots, that he

had had them some time, and that they had risen in value?

A. I think not.

Q. Will you swear he did not so state?

A. I will swear I have no recollection of it.

Q. Was there anybody by at that conversation?

A. There was some workmen there, but I don't think they were paying attention to what was said.

Q. Was that the first time you talked with the Governor about those lots?

A. I think it was.

Q. Didn't Governor Butler tell you that he had divided up that block, and gave the other half of it to other parties, at what it cost him?

A. I recollect this, that General Patrick said that he had been trying to buy three of the lots, and I told him that I had tried to buy them, and if I could get them at a fair price I would buy them.

Q. Mr. Cropsey, did you not know if that property belonged to the State, that David Butler had no right to sell it at private sale?

A. I ought to have known.

Q. Did you not know it?

A. I presume I did.

Q. Will you tell the court why you paid your money, \$2,400?

A. We had been selling a large amount of the Governor's property and getting the title of the tract from the State.

Q. You supposed he had already power?

A. I did not know. He bid off the lots.

Mr. ESTABROOK. You have spoken of the practice. You supposed it belonged to the Governor. Did you know how the Governor acquired it?

A. The talk commenced about General Patrick having the lots. The Governor said he could sell them and would at a fair price.

Q. Did you learn how it was; how they came to be called the Governor's yet the title was in the State?

A. There were any amount of lots called the Governor's with the title in the State; and that was the practice.

Q. As his agent, you were in the habit of selling them for the Governor?

A. I rather think, at the time, he furnished a list of the lots.

Q. What was the practice by which that sort of an arrangement was brought around at the lot sales?

A. So far as I know, the Governor would bid off lots, hold them till he could get a higher price, and then sell them.

Q. When they were bid off in his name, will you state whether any money was paid to the State?

A. I do not know. They were anxious to get the money as fast as the lots were bid.

Q. In the case of your own lots, had they been paid for before you purchased them?

A. I do not know as to any lots. I had no means of knowing unless I went to examine the books, and that I was never called upon to do.

Q. Do you know what the original price was at which they were bid off?

A. It was shown me on the stubs before the investigating committee. I think it was \$1,000.

Q. That was the amount fixed as the consideration by the Commissioner?

A. Yes.

#### TESTIMONY OF THOMAS P. KENNARD.

T. P. Kennard was called and sworn.

By Mr. ESTABROOK:

Question. Mr. Kennard, state what office you held during the last two years, up to January?

Answer. Secretary of State.

Q. State whether, as Secretary of State, you were a member of the Board of Commissioners to sell Lincoln lots?

A. I was.

Q. What position did you hold in that Board, by arrangement between yourselves?

A. I acted as kind of cashier of the money.

Q. Do you know the lots sold by Governor Butler to Mr. Cropsey?

A. I do.

Q. State what was the condition of that title; where it was acquired, and what its condition was at the time Mr. Cropsey purchased them?

A. I do not know. The title was

conveyed from the State to Mr. Cropsey.

Q. Will you state whether the State itself, through its agents, sold to Mr. Cropsey?

A. I think Governor Butler sold the lots to Governor Butler.

Q. Will you explain why Governor Butler should sell lots whose title was in the State?

A. Governor Butler, as one of the Commissioners, and the party the law gave authority to deed the lots, concluded it was not proper for him to deed to himself, and all the property, I think, thus purchased in all our transactions here, the title has been left for the State until he sold it, or, in some instances, he has had it deeded to other parties instead of to himself, but usually let the title remain in the name of other parties, and deed the title to the parties to whom they were sold.

Q. Well, I will call your attention to the special case of these lots and the circumstances under which they were purchased?

A. Yes, sir; he purchased them at the general sales in 1869.

Q. State if anything was paid by Governor Butler to the State until he sold to Mr. Cropsey?

A. Governor Butler, myself and the Auditor bought considerable property; and we paid for it along, from time to time, as it was needed. Governor Butler made payments upon his property, from time to time, when I called upon him; upon all his property from time to time; I don't know that it was credited to any specific property.

Q. Was there any instance where Governor Butler made special payments upon property, at the time he bid it off?

A. Yes, sir; I think so.

Q. Did he for these particular lots?

A. I do not know.

Q. You don't know whether the purchase money was ever paid into the State Treasury?

A. I think it was; because all the property Governor Butler ever bought he has paid for.

Q. What amount was Governor Butler in the habit of bidding off at the sales?

A. It was thought that if we did

not have confidence in the prospects of the new town, other people would not; hence myself, the Auditor and the Governor were bidders.

Q. Did they always pay something on the land?

A. Yes, sir; that is, they would make payments from time to time. I would state this: I believe the law said we should collect the money and pay it into the State Treasury. We made an arrangement between ourselves, that we were to make our payments as the money was needed.

Q. Now then, as to the price of these particular lots; have you any records to show what amounts were paid at this sale, if any?

A. No, sir, I have not. I can't tell by recollection. These same lots were not bought up twice that I know of. They were sold as a block, and bid in by the Governor. The purchase money was paid by the Governor; that's my recollection. I can't say just when it was paid. As I stated before, the Commissioners, all of them, made payments along from time to time, as the money was needed, until it has all been paid.

Q. Then the purchase money of these lots was paid at the time Cropsey bought them. How much did all these lots bring?

A. Well, Governor Butler sold half the block to Cropsey for \$1,000.

Mr. REDICK. You speak of the practice of purchasing lots and paying in as the money was demanded?

A. The money was being used on the public buildings, and the money was paid as it was needed on these buildings.

Q. How did Governor Butler keep up his account?

A. He kept it up as well as any of us; none of us kept it up very well. He has paid for all the property he bought.

Mr. ESTABROOK. Did you state there is anything to show that the Governor bought these lots?

A. Yes, sir, the sales book, which is in the Governor's office.

Q. There is record kept by the Board to show just how much was bought at that particular time; when he bid these lots off, was there any sort of evidence of title given him?

A. Yes, sir; there was evidence on the sales book; no papers passed between Governor Butler and the other Commissioners.

Senator THOMAS. Have you any record which shows when the Governor paid the purchase money for the lots sold to Cropsey?

A. I have not.

Senator HASCALL. State the time and manner of the sale of the Cropsey lots to Governor Butler by the State, and about the number of persons present at the sale?

A. It was in June, 1869, I think at the time of our sale. We had sold block 153, east of block 151, which the Auditor and myself purchased. Myself and the Governor and Colonel Patrick, auctioneer, was in the carriage. It had begun to rain and we were moving along, when the Governor wanted to know what block 153 brought, and I told him \$2,000; and he said he would give that amount for this block, as he wished to build on it at that time, and I told the auctioneer to cry his bid; he did so and it was bid off to him at that price.

Q. I would like to have you state what proportion of that block the Cropsey lots were?

A. The south half.

Mr. ESTABROOK. While the crowd was absent and you were moving from the other block, Governor Butler made this offer and you told the auctioneer to cry it?

A. Yes, sir.

Senator SHELDON. Did you not purchase the north half of block 151?

Mr. REDICK. I object to that question.

Mr. ESTABROOK. Why?

Mr. REDICK. Why, it has no point to it.

Mr. ESTABROOK. The Court puts the question.

Mr. REDICK. Oh! I think the question has point to it—is a good question, and a reasonable one!

Witness KENNARD. I would state that I purchased the north half of Governor Butler, and not of the State. After Governor Butler had bought this block he concluded to build his house over where it is. Him and I

had bought that land together, and he told me he was going to change the place of building his residence, and he would let me have half of this block if I would let him have all of that land over there. I told him I would do it, and the title was made to me. The title remained in the State until that time.

Senator THOMAS. Was a certificate issued to Governor Butler for those lots before they were sold to Colonel Cropsey?

A. I think not. I believe I stated there was no papers or evidence of title passed with the sale of those lots as with others.

Q. Are you certain that Governor Butler paid the purchase money for those lots before they were sold to Colonel Cropsey?

A. I stated that he paid money from time to time, and he might claim the right to apply it where he pleased.

Mr. REDICK. Did the Governor ever bid off a lot at public sale that he has not paid for?

A. I think not.

Mr. ESTABROOK. He did not pay it at the time?

A. I have answered that.

Q. I would like to have you state Governor Butler's way of buying lots?

A. He, and the other Commissioners, always bid heavily to encourage confidence in other bidders, so as to get those lots to the highest possible figures, and we always took the lots we bid off.

Mr. ESTABROOK. Until now, we have not had a consultation. We think we are through with the exception of re-calling one or two witnesses, and I suppose if we call them now we could not call them afterward.

Senator GERRARD. I move that the Senate, sitting as a Court of Impeachment, adjourn until 9 A. M. Adopted.

#### Seventh Days' Proceedings.

TUESDAY, March 21, 9 A. M.

President CUNNINGHAM. The hour having arrived, the Senate will resolve itself into a High Court of Im-

peachment, and the Sergeant-at-arms will make due proclamation.

The Sergeant-at-arms made the usual proclamation.

The Managers of the House of Representatives, the Governor and his counsel, then appeared and were assigned seats in the chamber.

The Secretary read the journal, which was approved.

The PRESIDENT. The Managers will proceed with the evidence to sustain the charges of impeachment.

Mr. ESTABROOK. We now offer these certificates of deposit in evidence, showing the signature of David Butler.

Mr. REDICK. We admit the genuineness of the certificates and the signature. We also admit that David Butler was Governor. We also admit that the \$16,881.26, the five per cent. in question, has not been deposited with James Sweet's successor, as State Treasurer; but assert, at the same time, that we had previously deposited it with Mr. Sweet.

Manager DOOM. Mr. President, have A. W. Kellogg called.

TESTIMONY OF A. W. KELLOGG.

Mr. Kellogg is called and sworn.

By Mr. ESTABROOK:

Question. Have you a record of the land sales?

Answer. Yes, sir.

Q. What is your office?

A. I am the Governor's private Secretary. Have been so two years next July. As such private Secretary I have not had the constant control and custody of the sales book. I had nothing to do with that until sometime in the winter of '69-'70. From that time I had the custody, and made nearly all the entries therein.

Q. State whether you attended the public sales?

A. I attended the sales, but only kept a record of the last two.

TESTIMONY OF WILLIAM W. HOLMES.

William W. Holmes was called and sworn.

By Mr. ESTABROOK:

Question. State your place of residence?

Answer. Lincoln, Nebraska.

Q. How long have you lived here?

A. Two years.

Q. State whether you have been in the habit of attending the land sales of Lincoln lots?

A. Yes, sir.

Q. What is your business?

A. I am not engaged in any business particularly. Have been a land agent.

Q. Are you acquainted with the topography of Lincoln?

A. Yes sir.

Q. How many lots are there in a block?

A. Twelve.

Q. Are you acquainted with block 151?

A. Yes, sir; it is divided into twelve lots.

Q. Do you know anything about the sale of that block, or any portion of it; if so, state what you know about it?

A. I don't know that it was ever sold. I never heard it offered for sale.

Q. State whether you was present at the June sale of 1869?

A. I was.

Q. Was you present during the whole of that sale?

A. I was.

Q. State whether at that time any lots, of that block were sold or offered for sale?

A. I did not hear it offered for sale.

Q. State all that occurred during that sale?

A. Well, I followed up the sale, from the commencement through; and I did not hear any of those lots offered for sale, and none of them sold, to my knowledge.

CROSS-EXAMINATION.

By Mr. REDICK:

Question. During that sale, were there not crowds about; and when they were moving from one part of the city to another, was it not a fact

that some sales were made while the crowd was coming up?

Answer. Not that I know of. I don't think any lots were sold in the absence of the main crowd.

Q. Was not the carriage ahead some of the time?

A. Yes, sir. I tried to keep up with the carriage generally.

Q. Have you ever known lots to be sold before all the crowd got up?

A. Yes, sir, I have, sometimes.

By Mr. ESTABROOK:

Q. Could these lots have been sold in that way?

A. I think not.

Mr. ESTABROOK. I will state to the Senate that we have reason to believe that one of our important witnesses, Mr. Silver, is on his way here from St. Louis, and will probably be here on the next train; and we ask the privilege of the Senate, should that witness, or any such important witness as McBird arrive, that we may examine him, and with that understanding we will proceed, as we only desire to recall one witness, Mr. Kennard.

Mr. REDICK. We don't want to be understood, by our setting silent, that we accept of your proposition.

Mr. ESTABROOK. That is a matter that rests with the Senate, and we will take our chances.

Mr. REDICK. Yes sir, you have been taking your chances all the time.

T. P. KENNARD RECALLED.

By Mr. ESTABROOK:

Question. Mr. Kennard, you have already been sworn. Now state whether these are the books and records of the sale of lots in the city of Lincoln?

A. They are.

Q. Will you open them and point out the place where the sale of the lots, to which your attention was called last night, in block 151, sold to Mr. Cropsey, was made?

A. The entry appears.

Q. Was that entry made at the time the sale was made?

A. It was not.

Q. Can you state what changes have been made?

A. At the time of the sale, I think Col. Patrick was the clerk of the sale. At that time the entry was made in the name of David Butler of the whole block. I bought the north half of the block from one to six inclusive, of Governor Butler, some time afterward, and then the certificate was issued from the State to me and my name substituted on this memorandum book, and Butler's name at lots seven, eight, nine, ten, eleven and twelve.

Q. There is a misunderstanding as to the sale at auction?

A. The manner of the sale was that we had sold block 153, where the Auditor's house and mine is; turning from that, we had a large carriage in which the Governor, myself, auctioneer, and perhaps one or two other parties were, we drove from there to this block, and as we were going, the Governor asked what the block sold for that the Auditor and I had bid off. I said about \$2,000. He said he would give \$2,000 for that block, as he wanted to put his house on it. I merely stated to the auctioneer to cry his bid for the block. It was done and bid off.

Q. State whether there was anybody present except those in the carriage.

A. Others were driving along with us.

Q. Did the auctioneer call the attention of the crowd?

A. Perhaps not so much.

Q. Was not that the understanding that he should simply comply with the form and allow the block to be sold at the Governor's bid?

A. I think he gave the full value of the block, as shown by the price obtained for others. The Governor wanted the whole of the block. We had sold one block for a lot at a time, and it brought \$2,100. Others sold for less money than the \$2,000.

Q. How many attended that sale that day?

A. There were not many. We had just commenced. It was raining. I should think there was from twenty-

five to fifty persons, I don't remember.

Q. Were they present so that they could hear or did hear the auctioneer's voice?

A. I do not know how many heard.

Q. Did the carriage stop while the sale was being made?

A. I could not say, I think it did.

Q. Did the auctioneer rise to his feet?

Mr. REDICK. Now, don't lead him. Ask him to state.

A. I don't remember whether he did or not. I think I stated yesterday and I now state, that the sale was not as formal as it ought to be.

Mr. ESTABROOK. Do you say it was not the direct purpose to allow Governor Butler that bid, regardless of competition?

A. Well, I do say it was rather the expectation to let Governor Butler buy the block.

Q. State whether the entry of the sale was made immediately?

A. I think it was. Colonel Patrick was the clerk of the sale.

Q. Was it so entered by Patrick upon the book you hold in your hand?

A. I think so.

Q. I understand you to say that was simply a memorandum book?

A. Yes, sir; this was merely a field book, to be carried with us.

[A book is produced, and the witness is asked if that is the tract book, and if the entries are made in it. Witness explains the book.]

A. This book is made out from the deeds and records.

Counsel for prosecution offers tract book, also certain other books as evidence.

Q. When was this tract book made?

A. I can't tell. The Governor's Private Secretary can tell.

Q. Within the last six months?

A. I think not.

Q. How long did these records rest alone in these field books, without being copied into another record?

A. The first land was sold in '69, and remained perhaps a year before the tract book was made out; at the same time a great portion of it was entered upon the stubs of certificates, deeds and records.

Q. Then this book was made up from these. When was the change in the books made; how long after the sales, as near as you can remember?

A. I can't tell exactly; think it must have been three or four months since the sales, when the Governor's name was erased and my own inserted.

Q. Was anything paid by the Governor upon the purchase of these lots, at the time he bid them off?

A. Not on that day.

Q. Was anything ever paid direct or specifically for these lots, by name and number?

A. Well, they are paid for.

Q. I ask how was the lots paid for?

A. Paid for in money.

Q. At what time?

A. The date is shown by the records and I think I stated that the Governor, myself and the Auditor were the Commissioners, and the law made it our duty to sell the property, collect the money and put it in the State Treasury. By the arrangement, I acted as a kind of collector. They paid money over to me from time to time as it was needed. When the Governor himself considered he paid for these particular lots, I can't say; he was a Commissioner as I was and had the right to pay this money in when he got it. As I said yesterday I don't know the time when he paid for any particular lots; he paid up from time to time.

Q. Do you know about the time the Governor sold these lots to Cropsey?

A. I knew of it at the time. I can't say just now.

Q. State whether the Governor had any title to these lots at that time except the record contained in these field notes?

A. I think he did not.

Q. Can you state from these records how many lots the Governor bid off at that sale?

A. I could not; he bid off \$10,000 or \$12,000 worth. I don't know the number of the lots. The next sale was in September I think. I could not remember the amount then; I have no memorandum of it now. The next sale was about the last of the following June. I have no means of knowing what the Governor bid off



then; he did not bid off an equal amount each time; he bid off the most at the first sale. We had four public sales.

Q. Now, from your knowledge of the records, can't you state how many lots in all, the Governor paid for?

A. I do not know. I cannot tell all about a transaction covering two years of time and several millions of dollars.

Q. Can't you give the approximate number?

A. This would be the merest guessing, but I should think in all he bid off perhaps fifty or sixty lots.

Q. Did he ever bid off any of them in any other way, than the way he bid off the lots in block 151?

A. He bid off all of them in this same way.

Q. State whether the record of sales to Governor Butler was kept on a private book or public record?

A. His accounts and mine were kept on a private book.

Q. Was there no public record of his purchases or payments?

A. There was not; the arrangement between him and the other two Commissioners was a private arrangement; we were all under bonds of \$60,000 for the faithful performance of our duties.

Q. Is there any public record by which you can tell the times and amounts of the payments made by Governor Butler on his purchases?

A. There is not any public record.

Q. Is there any record of any kind?

A. No, sir.

Q. No private record?

A. No, sir, not that I have control of.

Q. Is there none in the hands of any one of these Commissioners?

A. Not that I am aware of.

Q. Was there ever such a record?

A. No, sir, not that I know of.

Q. In what manner were the duties of that Board divided among you, the members of it, at the outset?

A. Well, our duties were all performed in conjunction, except the depositing of this money in the State Treasury, which I took upon myself to do, with the consent of the other members; I kept the account with the State Treasurer, and they paid the money over to me.

Q. State whether you was not, then, the Treasurer of the Board?

A. No, sir; both the other members would collect the money and pay it over to me.

Q. State whether you was not the financial agent of the Board?

A. No, sir, not formally.

Q. Did that Board employ a clerk, or secretary?

A. No, sir.

Q. Where were the books belonging to that Board, kept?

A. part in the Governor's office, and part in my office.

Q. Was it the duty of any member of that Board to make entries of payments?

A. I don't know that it was the duty of any one particular one; I know that the Governor, and another member of the Board, sometimes acknowledged deeds for other parties, and I generally looked to see if the money was paid.

Q. Where did you look to see if the money was paid?

A. To the parties purchasing.

Q. Did you look to Colonel Cropsey, then, in the case of the sale of these lots to him?

A. No, sir; I looked to Governor Butler; the blocks were bid off to Governor Butler, and I looked to him.

Q. Did you make entry of that payment?

A. When he made the settlement, I made a memorandum of his payments.

Q. Where is that memorandum?

A. I left it at the Governor's house the last time I was over there and settled with him, and he said he could not find it afterward.

Q. That was the only record, then, of the Governor's accounts?

A. Yes, sir; that was a private memorandum between the Governor and the Auditor and myself, the three Commissioners.

Mr. REDICK. In selling these lots was it not the custom with you here to have the auctioneer stand up in front of the carriage and auction them off?

A. He did, usually.

Q. Did you not frequently sell lots in driving the carriage along?

A. Yes.

Q. Where would the band of music be, if there was one?

A. There was a band sometimes.

Q. How many persons were there about the carriage besides yourself and the salesmen?

A. I do not remember. The carriage was a three-seated one, and was generally filled up.

Q. Was it not raining?

A. Yes.

Q. Do you recollect the auctioneer standing up and crying out the amount bid?

A. That is my impression.

Q. How far off was the main body of public sale attenders?

A. Not far away. We were all together on the other block, just one block from that, and then we turned around and drove on this block, and I do not recollect in what position the crowd was. We might have been in advance, or we might not.

Q. Was that \$2,000 the full value of the lots at that time, in comparing it with others?

A. The block within one block of it, where my house is, brought about \$2,100; a block cornering with this, on the other side, was sold for \$1,800; and the block just west was sold in that vicinity. Two thousand dollars was about a fair price.

Q. You state, Mr. Kennard, you deposited the money, as you collected it, in the State Treasury?

A. Yes.

Q. Did they give you a receipt?

A. A book.

Q. Do they ask a receipt from you?

A. No; I would deposit the money and take credit for it on a book, entitled "An Account with State Commissioners, David Butler, T. P. Kennard, John Gillespie, State Commissioners."

Q. You have been asked by the counsel for the other side, the manner of these sales, and how Governor Butler did. Now, will you state just exactly what Governor Butler did in regard to running up lots—why he did it?

A. Why he did it would be best known to himself.

Q. Then state whether or not he did not frequently bid in lots and then turn them over to persons for just

what he paid, for the purpose of fastening a seller or procuring a capitalist to put his money in this enterprise?

A. We were all three of us, (I think the books will show here,) the heaviest purchasers at the sales, and I know we talked among ourselves of doing that, and I would prefer that matter to be proven by other persons in the town. There are hundreds of them. We did it because we paid more, and took and paid for what we bid.

Q. How about turning over lots?

A. I know the Governor did that. In some instances I did, at just what we bid.

Q. State, in your opinion, what would have been the result, so far as the success of these sales are concerned, if the Commissioners had bid themselves, and not taken this course?

A. It is merely my opinion that the whole scheme would have been an entire failure.

Q. Is it true that these bids, and the purchase price bid, were published in the papers afterward?

A. Some were.

Q. Why not all?

A. They did not always get complete record of it.

Q. But they were designed to be published in the papers, giving the amount, time, and all about it?

A. Well, they generally give about the aggregate amount of the sales.

Q. Now state, Mr. Kennard, whether there was any understanding, direct or indirect, between you and the Governor and the Auditor, in buying these lots in for the mutual benefit of all; or whether you did not bid against each other, just as strangers?

A. Oh, we would do that, and it was generally remarked we were bidding against each other. We did it to keep up excitement and good feeling. There was no understanding whatever of that kind.

Q. Never any understanding on any block or lot?

A. No.

Q. You stated, in your former examination, you took part of the block?

A. Yes.

Q. In what manner did you get it?

A. I got it in exchange of an interest that I might have in a piece of land where the Governor's house is. He

and I bought that together. After that he concluded that he wanted to build his house over there.

Q. Tell all about this?

A. After we had bought that, he told me if I would agree to relinquish that to him, he would deed me half this block here at the same it cost him. He took that at what it cost me, and I took this at what it cost.

Q. Was there any evidence of title given?

A. Nothing but our word, which we considered good among ourselves.

Q. Was not this erasure made?

A. I think more than likely it was not made until I sold the property.

Q. Was it not the fact that the only evidence of title existed in the loosely made entries in this book?

A. Yes, sir. It was the usual practice, not only with the Commissioners, but with outside parties, to let the title remain in the State until they would sell the property, and then the practice was to go up and have the names changed on the memorandum books.

Q. Was there any money paid before this money was paid by Cropsey?

A. I have said several times that payments were made from time to time.

Q. Was there anybody immediately about that carriage at the time this block was bid off to the Governor?

A. I think a portion of the crowd was around in hearing.

Q. Who was the auctioneer?

A. Mr. Chadwick, I think. He don't reside here.

Senator HASCALL. Did you or did you not, after each sale of lots, publish lists purporting to show the lots sold, to whom sold, and the price paid?

A. We did not; the paper here got a partial list sometimes, but it was unofficial.

Q. The sale book shows that the lots in block 151 were sold at different prices, and the price of each lot marked opposite the same. Please explain how you came to mark the lots sold at different prices, as you say the whole block was sold together?

A. I did not make the entries, neither do I know who made them, nor why it was done.

Q. The name of David Butler appears to have been written over another name partly obliterated on that part of the sale book relating to the sale of block 151. What knowledge have you of the transaction?

A. I have no knowledge of it.

Q. The name of J. R. Patrick, partly obliterated, appears on the book in connection with the sale of block 151. How came that name on the book?

A. I have no knowledge of that only from what Col. Patrick tells me. I was told by him that he had made a trade with Governor Butler for a portion of that block; afterward the trade fell through. Patrick was acting as clerk in my office then, and he put his name down in pencil; his name was erased after the trade fell through. That's all I know of the transaction.

Senator THOMAS. In whose handwriting does the name of Governor Butler and yourself as purchasers of block 151 appear to be?

A. My name is in my own handwriting; I don't know whose Governor Butler's name is in.

Q. Examine the entry in the sale book showing that Governor Butler was the purchaser of one-half of block 151, and then state whether any name has been erased and the name of Governor Butler written over it?

A. It looks as though it might have been; I don't know whose name was there, or why it was done. Governor Butler's name was at the top first, where my own now appears. After we made the trade I changed that and put mine there.

Q. State whether you can make out the name over which that of Governor Butler has been so written. If you can, tell me whose name that is, and how it happened to appear there?

A. I can not.

Q. Was the name of Governor Butler as purchaser of block 151 ever published in a newspaper; if so, when?

A. I don't know, for I don't remember of ever looking over any of the published lists.

Q. You say, the records of the sale of Lincoln lots were made up from the sale books. Now state what records were made up from those sale books, by whom they were made, and where?

A. Well, the certificates and stubs, which I suppose form a part of the records, is in the Governor's office, which we call the sales book; and the deeds are made from the certificate stubs, and the tract book from the deed record. They were made by different persons at different times. The certificates were first issued when the deeds were called for; and the tract book was made up in the Governor's office by the Governor's private secretary. The sales books have been always regarded among the Commissioners from the commencement as mere memorandum books.

Mr. REDICK. Was there not frequently mistakes made while selling the lots on the field, and they were afterward corrected?

A. Yes, sir, very frequently; men would bid off lots and then sell their bids, or trade off their lots, and then we would change the memorandums.

Senator THOMAS. If the sale books were memorandum book, what were the record books which were made at or about the time of the sales?

A. The stubs of the certificates that were issued. The certificates were issued at the time of the sales of these lots if they were called for.

Mr. ESTABROOK. Where are those certificate stubs?

A. They are in the Governor's office now.

Q. Would those stubs show anything of the sale of block 151?

A. They would show a sale corresponding to the sale to Colonel Cropsey.

Q. What was shown on the stubs?

A. The amount paid, and when paid.

Senator SHELDON. Was the Auditor in the carriage with you at the time of the sale of block 151, at the June sale of 1869?

A. I don't think he was, but I could not answer positively.

Mr. ESTABROOK. State again who was in the carriage?

A. The Governor, myself and Col. Patrick, I think.

Q. Is Colonel Patrick about the building?

A. Yes sir, I think so,

#### JOHN GILLESPIE RECALLED.

Mr. ESTABROOK. Mr. Gillespie, will you state whether you ever had any conversation with Governor Butler in regard to the terms upon which he would make a lease of the saline lands generally, and what that conversation was?

Mr. MARQUETTE. I thought the counsel admitted himself, yesterday, he would have to confine this proof to some specific allegation. That is required in a civil case.

Mr. ESTABROOK. I ask him to state whether he had any conversation in regard to the terms upon which he would, or intended to, make leases of the saline lands to parties applying therefor, and say what he said about it.

Mr. REDICK. We want to bring you down to some kind of point. We object to it.

Mr. GILLESPIE. I would say, if there is no objection, he never said anything.

Mr. ESTABROOK. Never had any conversation in regard to the terms?

Mr. REDICK. Now, I object to that, because he has answered your whole question. You cannot ask another question.

Mr. ESTABROOK. I say I can. Did you ever have any conversation in regard to the terms he proposed to fix, upon which he would grant leases for the saline lands?

A. I never had any conversation in regard to what he would ask for a lease of saline lands.

Q. Have you in regard to what he proposed to make himself out of the saline lands, and what that conversation was?

Mr. REDICK. I object if he says he has, and if not I don't.

A. I had a conversation about a saline matter.

Mr. ESTABROOK. Did you have any conversation with him in regard to the statements in his message relative to the leasing of saline lands; and if so, what?

Mr. REDICK. There is no specification.

Mr. ESTABROOK. Well, we propose to bring it home to a specification.

Mr. REDICK. Put it in shape, and we won't object to it.

Mr. Estabrook submitted the question in writing.

The PRESIDENT. Gentlemen, the following question has been asked by counsel for the Managers: "Have you had any conversation with the Governor in regard to what he expected to make out of the lease of saline lands then in existence or hereafter to be made; and if so, what was that conversation?"

Mr. REDICK. To that question I object. The objection is that the only specification in this charge is found in the fourth specification to article I, which says:

"On the 12th day of July, A. D. 1869, one Thomas F. Hall, a party competent to take and receive a lease of the said lands, did apply to the said David Butler, Governor, as aforesaid, at Lincoln, in said State of Nebraska, for a lease of certain saline lands in Township ten, north of Range six, East of the sixth Principal Meridian, in the county of Lancaster, in the State of Nebraska; and the said David Butler, Governor as aforesaid, did, then and there, wilfully and corruptly, suggest, propose and offer to the said Thomas F. Hall, that if he, the said David Butler, should receive the sum of five thousand dollars for his own use and benefit, he would, as Governor as aforesaid, lease the said lands to the said Thomas F. Hall, and did then and there wilfully and corruptly indicate to the said Thomas F. Hall,——"

Now, this is a broad question, Senators, asking him to state what David Butler told him, as to what he made out of the saline lands. We are charged with having attempted to enter into corrupt contract with Mr.

Hall, relative to a certain saline tract. If he is permitted to ask what the Governor would make we are in no shape to contradict it. Supposing Mr. Gillespie would say that on a certain occasion Butler told him he would make \$25,000 out of these lands; if we were put upon our guard and notified of this evidence, we would look up our witnesses who were present, so as to show the statement was qualified or whether it was not. And now he has commenced, if you permit this question to be put, he will ask another. And you see it opens the door to a large number of questions incompetent and improper. We only ask to be governed by some reasonable rule of law, and we will be prepared to meet it. We don't know anything about these conversations, nor are we charged with making them. If they desire to hold us responsible for these conversations, they should have set them out here. And, Senators, it will be placing us in an unfair position, to allow any man to state loose conversations which we have no chance to rebut. My friend here is just as full of questions, I was going to say, as a small dog is of fleas, and if you give him a chance he will talk and question for the next ten days.

Mr. ESTABROOK. This question of time has ceased to be a scarecrow. I think we have pushed this along, so that they can no longer scare us by this cry. It will be recollected that Hall and Crowell both stated, that in conversation with Governor Butler he required \$5,000 before he would make them a lease to the saline lands. When the enquiry was made whether this was to be a bonus, or go into the State Treasury, the gentleman jumps to his feet and objects. Now I shall show what the Governor's policy was regarding this lease; I shall show

what his action was regarding this particular transaction.

**Mr. MARQUETTE.** The objection to this is simply in the allegation. Now I presume that the Managers here can either stand or fall upon what they have alleged. The very fact that a person bringing a suit at law, must make a specific charge, goes to show that the evidence is confined to the issue. There might be twenty or thirty transactions with regard to the saline lands. They made these specific charges, and we come here to answer them, and say we are now ready to meet them. When they find out we are ready to meet them, they go outside. I say a man cannot bring a suit without bringing specific charges. Yesterday the gentleman admitted that general questions, precisely like this, was not admissible. Now he claims the right, in the face of that admission yesterday, to admit this general testimony. The first rule of evidence is, that the testimony must be confined to the issue, which is the specific charges made by the Managers, and denied by the defense.

**The PRESIDENT.** The question is upon the exception. All in favor of the exception being sustained, will, as their names are called, answer "aye." Those of a contrary opinion will answer "nay." The vote was taken with the following result:

Aye—Mr. President.

Nays—Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant.

**The PRESIDENT.** One gentleman having voted in the affirmative, and twelve in the negative, the exception is over-ruled.

**Mr. ESTABROOK.** During the conversation did the Governor say anything about what he expected to

make out of the appropriation of the lands asked for by the message?

**A.** The Governor asked me not to oppose the appropriation asked for in his message. He stated that he wanted that appropriation made to Evans & Cahn for he expected to make some money out of it. He stated that he was hard up, and behind some \$30,000, but if that was made, he would be able to make some money out of it.

**Q.** When was it that he said this?

**A.** Immediately after the adjournment of the Legislature.

**Q.** State whether you was present at the sales of lots at Lincoln usually?

**A.** I was.

**Q.** State how the duties of the Board of Commissioners were divided?

**A.** The Secretary by common consent was made Treasurer of the Board. His duties were to collect monies, receive and deposit them with the State Treasurer. I was to keep the accounts with the contractors on the State buildings, and the Governor made the deeds.

**Q.** State whether you was present at the sale of lots and blocks in Lincoln, in June, 1869?

**A.** I was present.

**Q.** How were those sales generally conducted?

**A.** The Commissioners generally traveled in a carriage, sometimes some other carriages along, and we had a band of music along sometimes.

**Q.** Was you present at the sale of block 153?

**A.** Yes, sir; I was the purchaser of the south half of it.

**Q.** Was you in the carriage at that time?

**A.** No, sir; I was on foot along with the crowd.

**Q.** Who were the occupants of the carriage?

**A.** The carriage generally contained the Commissioners, the auctioneer and the clerk. I cannot remember who was in it at that time.

**Q.** State whether you was near the carriage at that sale; and if so, what was done?

**A.** I was along with the crowd and tried to keep near the carriage as they passed from one block to the other. The custom was to sell the lots as they occurred in the blocks,

and then move to another block, selling the lots separately. The auctioneer generally stood opposite the lot he was selling, so that the crowd would know what they were bidding on, and when they passed from one block to another, they generally waited until the crowd came up.

Q. State what was done in regard to block 151 at that sale?

A. I have no knowledge of that block being sold.

Q. What were your means of knowledge?

A. I was present during the whole of the sale, and if the block was sold I should have known it.

Q. Was there any halt made by the carriage opposite that when it was offered for sale?

A. I don't think there was any halt made there. I did not hear that block offered for sale.

#### CROSS-EXAMINATION.

By Mr. REDICK:

Question. At those sales was it not true that bids were received and lots sold before the crowd got up to the carriage?

Answer. No, sir, I think not.

Q. Will you swear that it never occurred?

A. There might be some such instance; the custom was to wait for the crowd.

Q. How far were you away from the carriage when this block was sold to Governor Butler?

A. Well, I could not have been far away. As a Commissioner I was always on the ground during the sales.

Q. Well, was it not true that you was along with the crowd?

A. Yes, sir, I think so.

Q. Are you willing to swear that lot was not struck off to David Butler by the auctioneer?

A. I testify I have no knowledge.

Q. Mr. Auditor, when the Governor spoke to you about the passage of the law granting the appropriation of certain saline lands, and stated to you he did not want it opposed, because he wanted to make something out of it, and that he was \$30,000 behind, or words to that effect, did not he tell you he had—in order to induce Cahn & Evans to develop that saline spring

or well—become personally responsible to the amount of one-fourth of the expenses; and if so, what did he say?

A. I think there was no such conversation passed.

Q. Did any such conversation pass at any other time between you and the Governor?

A. I have no recollection of any.

Q. Did not David Butler own a great deal of property in and about where these saline lands were?

A. I do not know of any property he owns. I am not aware of any near these lands.

Q. Would not the developing of those wells have a tendency, if they proved a success, to make him, as well as yourself, money, on the rise of property in and about Lincoln?

A. I would consider it a benefit to the town and community, if that interest was developed.

Mr. ESTABROOK. Will you state all that occurred at that conversation?

A. With Governor Butler?

Q. Yes.

A. The Governor stated to me, in connection with that, that if I would not oppose the appropriation of land, I was to have an interest myself.

Q. If the block had been sold at public auction, as lots were usually sold on the day of sale, would you not have known of this block 151?

A. If the block was sold, as blocks usually were, it would take some time, and I would certainly have known the fact. It was not customary to put a whole block up at once.

Q. Was there such an occurrence during the sale?

A. I think not a whole block.

Q. Did not the law prohibit it?

A. No, I don't think it did.

Q. Did you notice any pause of the carriage?

Mr. REDICK. I object to that. You can't re-examine your witness.

Mr. ESTABROOK. I am repeating. I ask if you saw any pause upon that block, of the carriage?

Mr. REDICK. If you don't ask any more you may ask that.

A. I don't remember any pause.

Mr. ESTABROOK, Did you see the auctioneer rise and make proclamation in the carriage?

A. I don't remember.

Senator KENNEDY. Was the Governor personally connected with Cahn & Evans, in the manufacture of salt in any way?

A. I have no knowledge of my own.

Q. Did you learn from your conversation with the Governor, that he was to get an interest in the lands asked for in his message to the Legislature, or any other valuable consideration?

A. I will repeat the conversation. My understanding was—

Mr. REDICK. Does the Senator want the "understanding" part of it?

Senator KENNEDY. The Senate has ruled that what a witness had learned in conversation was admissible.

The President again read Senator Kennedy's question.

A. My understanding was that he was to have an interest in the lands. That is what I inferred from his conversation.

Senator THOMAS. Examine the sale book where it shows a sale of one-half of block 151, in Lincoln, to Governor Butler, and state whether the name of Governor Butler has been written over any other name; and if so, whose name it is so written over. Then tell us all you know about that matter?

A. By looking closely at the book I notice opposite lot 7, block 151, Governor Butler's name written and rubbed out. I can see, distinctly, the name of John Gillespie. It seems Butler's name is written over, and was evidently designed, because of the ditto marks below, in which my name would appear to 7, 8, and 9, three lots. The first information I had of the selling of these lots was caused by a question asked me by Colonel Cropsey. He met me on the street and asked me if I owned lots 7, 8, and 9, in block 151. He told me he was so informed by Secretary Kennard. I asked him to go up to my office and I would look at a memorandum I had. As we walked along

he remarked, during the conversation, that he wanted to buy the entire block. After walking a little ways, I remembered I had a list of the lots purchased by me, in my pocket. Upon examination I found I had not purchased these lots, and he walked down town. Upon entering the Secretary's office I found this book and examined it. I found that lots 7, 8, and 9 were entered in my name, in pencil. I then examined the deed book, and found that the north half of the block was deeded to Thomas P. Kennard. I see that my name was erased and that of Governor Butler written over it.

Q. Examine the sale book again and tell me, if you can, in whose handwriting the names of Governor Butler and Thomas P. Kennard, as purchasers of block 151, are written?

A. The lots over which the name of T. P. Kennard was written I recognized as being in his writing. Don't think the Governor's name was written in his own handwriting. It looks more like the writing of his Private Secretary, Mr. Kellogg.

Senator TUCKER. Was the appropriation of the saline lands, which you say the Governor expected to make money out of, ever made?

A. I have no knowledge of any such bill passing.

Q. Did you not some times sell a lot before all of the crowd got up to the carriage?

A. In answer to that question, I will say that the Commissioners always waited until they thought all the buyers were present. Of course there was always some stragglers hanging on. If we had any idea that buyers were not present we would wait to give them an opportunity to come up.

Q. Have there never been any lot or lots sold without stopping the carriage?

A. The bidding was lively sometimes. By driving slowly a lot would be bid off as we passed.

Q. Did the Commissioners never put up a lot with the privilege of the purchaser taking the whole or to one-half of the block?

A. I remember in a few instances where parties desired it, they would bid on a lot with the privilege of taking more; but that was not the general rule. That is when a lot was sold.



the buyer could take the lots adjoining it if they desired; but this was not the general rule.

Mr. ESTABROOK. What would have been the value of that block, as blocks were sold, if put up and sold in the usual way?

A. Well, I could hardly give a correct answer to that question. It is a valuable block and a year afterward it was sold for a good deal of money.

Q. Well, at that time how much would it have brought?

A. About \$300 a lot, judging by the lots bought on the opposite side of the square; perhaps \$300 is a little high.

Q. How many lots were there in that block?

A. Twelve.

Senator THOMAS. Do you know when Governor Butler paid the State for the half of block 151?

A. I will answer I do not.

A. W. KELLOGG RECALLED.

By Mr. ESTABROOK.

Question. Did you hear the testimony of Mr. Gillespie, relating to the handwriting on that book?

Answer. Yes, sir.

Q. State in whose handwriting Governor Butler's name appears?

A. Governor Butler's name is in my writing.

Q. State the circumstances under which that entry was made?

A. I made up my tract book from the certificates and deed records. I noticed at that time that the lots were "dittoed" under the name of Mr. Kennard, and I think he told me at the time that the south half of that block was sold to Governor Butler, and sold by him to Col. Cropsey, and I wrote Governor Butler's name opposite the lots.

Q. Are there not some other erasures there?

A. I see some, but think they were made before that time. I very frequently had to make erasures.

Senator THOMAS. Was the name of John Gillespie there at the time you wrote the name of Governor Butler?

A. I think not; it might have been there before that and erased.

Mr. ESTABROOK. Now I think we are all through, unless some testimony comes in on the cars.

Senator TUCKER. Mr. President, I would like to ask the Auditor one more question. (Witness resumes his seat.)

The PRESIDENT. Mr. Auditor, Senator Tucker asks you the following questions:

Q. How much more do you think was realized from the sale of lots in Lincoln by the bidding of the Commissioners, than would have been had they not so bid?

A. Well, sir, my impression is that the Commissioners, bidding as they did helped to facilitate the sale and add to the amount, and had an effect upon the purchasers to stimulate confidence in them. I am not able to fix the amount but it was advantageous to the State.

Q. Did it add to the amount, say \$50,000 or \$60,000?

A. Well, it is possible.

Mr. REDICK. Mr. President, the Managers through their counsel have said that they expect a witness on the train. The respondent desires that the Managers put in their whole case before we introduce our witnesses.

Mr. ESTABROOK. If any witnesses come they will be such as will sustain the charges. We are now through unless they do come.

Mr. MARQUETTE. I want you to put in your whole case before we commence.

Senator GERRARD. I move that the Senate, sitting as a Court of Impeachment, do now adjourn until 2 P. M.

The motion was carried and the Court adjourned until 2 P. M.

#### AFTERNOON SESSION.

The Senate, sitting as a Court of Impeachment, met at 2 P. M. Roll called, and the Senators all present.

The PRESIDENT. If the Managers have anything further to offer they will proceed.

**Mr. ESTABROOK.** The witnesses we expected have not arrived. We have no further testimony to present now, but will rest the case. If occasion may arise in the future, we will submit the matter when it does arise.

**Mr. BRIGGS.** Mr. President: I shall not occupy any considerable length of time in arguing this case, for we are not unmindful that you Senators, as well as Representatives, are here, not in obedience to any positive requirements of the law, but rather in obedience to the promptings of a high sense of the duty which you owe to the people of the State. The constitutional limit of the term expired some time ago, and you have been here for many long and weary days engaged in this investigation, away from your accustomed avocations and your homes, without any pecuniary compensation. This you give as a free gift to the State. The respondent, conscious of these considerations, is not disposed to occupy your time needlessly. When the respondent was called to appear before this tribunal at once, he asked not for time, but showed himself ready and willing to proceed to trial, conscious of no wrong intent upon his part. This is a remarkable contrast to all the impeachment trials which have occurred in our history. If this respondent had not been entirely free of the crimes charged against him, he would have asked for time; time, which to the accused is worth everything; time, that the excitement may pass away; time, that reason may resume its sway. But here, the Managers ask for time; they have asked for it on one or two occasions, and yet they have not maintained one of the articles of impeachment against the accused. Were it our duty to secure an acquittal simply, we should offer no evidence, but rest

our case with you. But we are admonished that there is a higher tribunal than this Court sitting here, and outside of this, which weighs the actions of men. We desire this to be a full and sure investigation, and we hope we shall be able to present testimony enough to place this matter beyond question. I shall not occupy your time by going into questions of the law involved in this case; that was done to a considerable extent in the arguments at the opening of this case. Nor shall I indulge in needless flights of eloquence, such as have characterized the counsel for the prosecution. We shall endeavor to be brief. You don't want to hear learned allusions to Burke, or any other of the great authors of the last century, or the present. You want to hear the particular facts bearing on this case. I will take up the articles in their order, (and state briefly to you the points we propose to make. The first article exhibited against the respondent, relates to the 5 per cent. fund granted to the State by the United States, in which they set up the joint resolution of the Legislature as follows:

*Resolved, That the Governor of the State is hereby authorised and directed to bring the matter to the attention of our Representative and Senators in Congress, and request them to unite with him in endeavors to secure the same to be paid over to the Treasurer of State at as early a day as possible. And the Governor is hereby authorized to employ any other and further assistance that may be necessary to secure that result.*

We think we shall be able to show that the respondent complied literally with that resolution, by getting this money, and placing it in the State Treasury, if it has not already been done to the satisfaction of this honorable body by the testimony before

you; that he got it in the form of a warrant from the United States, payable to the order of the respondent, as Governor of the State, and that the warrant was brought to Nebraska by one E. B. Taylor, and deposited in the First National Bank at Omaha, to the credit of the respondent as Governor, and further, that the Deputy State Treasurer—Nelson C. Brock,—was authorized in his official capacity, by a power of attorney, issued under the great seal of the State and signed by David Butler, Governor of the State of Nebraska, to endorse the warrant and receive the money on it; that Mr. Brock went to Omaha, drew that money as directed and brought it to Lincoln; and placed it in the banking house of Sweet & Brock, the place where all the public monies were kept at that time. We shall show that the money was not placed there to the credit of David Butler, but to the credit of that celebrated person John Rix, or to Nelson C. Brock, and beyond the reach and control of the respondent in this case; then, if we do that, we shall contend that the respondent strictly complied with the Joint Resolution of this Assembly. We shall proceed further and show that Mr. Sweet, as State Treasurer and custodian of this money, a month or two afterwards, suggested to the Governor that this money was laying idle, not drawing interest, and it would be better to place it where it would draw interest. That in pursuance to that suggestion Governor Butler borrowed it, telling Mr. Sweet at the same time to draw a mortgage for security; but that he, Sweet, neglected to do so. But we shall show that finally mortgages were executed, and bonds issued on this real estate as security; and that this security is abundant to secure the loan, and is constantly increasing in value, with

no buildings on it to be burnt off; and that it is clear from any incumbrance. If we shall show all that,—and we are certain we shall—who has lost anything in that investment? It is placed so there can be no possibility of the State losing that money. We are not here to claim that the respondent was not neglectful in not making out those securities at the time the money was borrowed, but we can show neglect on the part of the State Treasurer in not procuring these securities as he should have done. Now, if I have made myself clear upon this point—as to what we are able to and will prove—it is all I desire now, for it is not time to argue the merits of the case. Now we come to the Second Article. There is no evidence here to prove the first, second, third and seventh specifications. They are out of the way. In relation to the fourth, some proof has been offered here to that specification. All I have to say in regard to that is that our answer explains fully that transaction, and, if necessary (although we don't think it is), if we do produce proof, it will be such as will show that Governor Butler, in that transaction, never, for one moment, was to receive an atom of consideration himself, personally, from Hall for that lease; and that he never did receive a cent. Then, again, are the two specifications, 4 and 5, article 2d, relative to Nelson C. Brock being an applicant for the position of Treasurer to the Board of Regents. Why Brock—all the testimony there was in support of this specification was the evidence of that man. It is simply an impression he says he had when he left. That there was a bargain between them that he should have the office and pay the same amount for it. So I will not take up your time by

specifications containing such insinuations of evidence as in this. Then, these other specifications being left out, no proof being offered, we come to the 3d article, in relation to Mr. Chase. Well, that is in a nutshell. There is not much of it. It don't appear the State has lost a cent in that transaction, and we expect to produce evidence to show that the allegation, in the answer we have filed, is true. Now we come to the 4th and 5th articles, where we admit, perhaps, as the prosecution have intimated frequently, a violation of law in relation to the erection of the Lunatic Asylum and the University Building—an excess over the appropriations respectively made for each by the Legislature. That we admit. This act is familiar, I suppose, to you all—the act in relation to the sale of unsold lots:

#### AN ACT

To provide for the sale of the unsold lots and blocks on the town site of Lincoln, and for the location and erection of a State University and Agricultural College and State Lunatic Asylum.

SEC. 1. Be it enacted by the Legislature of the State of Nebraska, That the Governor, Secretary of State, and Auditor of State, be, and they are hereby, appointed commissioners for the purpose of selling the unsold lots and blocks on the town site of Lincoln, and that said commissioners are hereby further authorized and directed to locate on or near the town site aforesaid, a site for a State Lunatic Asylum. That before the sale of lots contemplated in this section, the said commissioners shall cause to be surveyed, staked off, and platted, in accordance with the original plat of Lincoln, the S. W.  $\frac{1}{4}$  Sec. 23, T. 10, R. 6 east; said land being owned by the State as "saline lands;" and said commissioners further cause to be established a suitable grade line for all the streets and alleys in Lincoln, which said work shall be done before any work in grading upon the public

reservation shall be commenced, and the expenses for such surveying not exceeding the per diem allowed in the act creating the town of Lincoln, approved June 14th, 1867, shall be paid from the proceeds of the sale of lots.

SEC. 2. That from the moneys arising from the sale of said lots the sum of \$16,000 is hereby appropriated for the purpose of constructing the dome of the Capitol building, enclosing, grading and ornamenting the Capitol grounds and completing the painting in and about the said building, and the further sum, from the proceeds of the sale of said lots of \$50,000, to be expended, under the direction of said commissioners in the building, upon such plan as they may adopt. Of a State Lunatic Asylum, on the site by them selected as aforesaid, and that the residue of the moneys arising from said sale of lots as aforesaid not exceeding the sum of \$100,000 be and the same is hereby appropriated to be expended under the direction of said Commissioners in the construction and erection of a suitable building for a State University and Agricultural College, upon the grounds in or near the town site of Lincoln heretofore selected, or to be selected by said Commissioners, and laid off for that purpose.

*Provided*, That if a sufficient amount is not realized from the sale of the lots aforesaid from which to appropriate as aforesaid \$100,000 to build the State University and Agricultural College, the said Commissioners may sell, in the same manner, to the highest and best bidder, a sufficient amount of Saline Lands, not exceeding forty sections, at a price not less than five dollars per acre, to make up the deficiency.

*Provided*, Further that said lands shall not be selected for such purposes from any section or part of section on which any salt spring may be located, or a section adjoining the section on which said salt spring may be located.

This act provides for the erection of these public buildings, and it provides the source from which the revenue shall be derived for that purpose. The means to erect these buildings does

not come out of the people by taxation. It is provided that the unsold lots and blocks of this town shall be sold, and if not sufficient, the salt spring lands shall be devoted to this purpose—the erection of these two buildings. This is the provision. This money is not to be raised out of the people by taxation; and suppose it was for a moment, and suppose these men, as in this case, did exceed the appropriation for those buildings, is the State injured in consequence? Does it bind the State in this contract? For instance, for the Lunatic Asylum, where the appropriation is \$50,000 and the contract \$100,000, does it bind the State from the fact that they made that contract? I suppose not. It binds only to the extent of the appropriation, unless the State ratifies it by an act of the Legislature. Who does it bind, then? It binds the parties, personally, in excess of the \$50,000 appropriation. It falls upon them and not the State. I do not believe there is any question about that proposition of law. Look at this matter a moment. Here were these men, the respondent, the Secretary of State, and the Auditor. They came upon this town site a little over three years ago, hardly a house within three miles from this spot. They came in search of a Capital for the State; and what capital had they when they came out here? Nothing but the simple act of the Legislature; not a dollar appropriated to them; not a dollar to come out of the people's money to aid them in this enterprise. They came here, staked off the town-site, platted out and recorded it, and they had a lot sale here—right out here, upon this broad prairie. What did they do? By energy almost unprecedented, they went to work, and at the first sale, realized money enough to erect the edifice in

which we are now assembled; and they kept on realizing more until this building was paid for out of lots in this town-site here. Simple raw prairie has produced these fine edifices. Of course these men were interested in promoting the prosperity of the town, not only for their own reputation, but to enhance the property they owned themselves. Now they go on, I believe, and build this building, except the domes; then they are to erect two other buildings, the Lunatic Asylum and University. The Legislature thought the lots would not be more than sufficient to build these buildings within the limit of the appropriation; but these men were willing to take their chances. "The amount," say they "will not erect such a Lunatic Asylum as will be creditable to the State, nor a University of sufficient capacity and size. It is true that our contracts don't bind the State beyond the limit of \$50,000 on the Lunatic Asylum, and \$100,000 for a State University, but we are in this thing; we are determined it shall be a success, and we will run an individual risk for the purpose of carrying on the work, and build, and bring to a successful termination, the work we have commenced here." And it was, no doubt, in view of these considerations that the Legislature thought fit to endorse the acts of the respondent and the other Commissioners in the matter. Where, in the history of our country, can you find the equal to these transactions, where all these public buildings have been erected without costing the State a cent? Why, instead of bringing charges of wrong-doing against the Governor, he should have received an ovation at your hands. This Commissioner transaction is a separate matter entirely, separate and distinct from anything contemplated

by the Constitution, and the fourth and fifth articles of impeachment should not have been drawn. Now comes the Sixth Article, of which there is no direct proof to show that when the Governor made that statement, he did not state simply that the money had been paid into the State Treasury. Now we arrive at the Seventh Article, the "Tichenor loan." We expect to show, in that transaction, that two at least, of the persons designated in the school law, consented to that loan; that the security was sufficient; that the State lost nothing by that transaction. We come now to the Eighth Article, in relation to the Thomas Griffey \$600 transaction. I believe there was no proof to sustain that Article. The Ninth Article relates to the grant of lands to the Souix City & Pacific Railroad. We shall show that that road had been consolidated with the "Nebraska Air Line" road, and the Legislature had given them that grant, whether wisely or unwisely, it is not for us to question. The law provides that when satisfactory evidence is brought before the Commissioners that the road is built, they are to have their lands. But it is claimed by the other side that the patents were made out to the S. C. & P. R. R. Here we wish to show that the two roads were consolidated, and the second succeeds to all the rights of the first. If the Governor had not given the patents, the State would have been compelled to by process of law. We have now reached the Tenth Article. Well, there has been no proof offered on that. Finally we arrive at the Eleventh Article. It has been shown that it was the habit of the respondent and the other Commissioners to bid lots off loosely, and the reasons have been assigned. It was necessary, in order to

build up a town in this wild prairie, that some men should have nerve and also confidence in the future of the new town, and the Governor bought lots extensively, as did the Secretary of State and Auditor, and these lots have all been paid for. We shall show that was the case with block 151. It was bought for \$2,000, and that was a fair average price for property there. It seems to me that the State has done well, in this matter, which covers three years of time and two millions of dollars in money, and that it has gone into this splendid edifice, without costing the people of this State a dollar. I believe that you, Senators, will take cognizance of this matter. I do not believe that you will take narrow views, but that you will follow the old Persian rule: "That a man must not be condemned for one single mistake." And if he has made mistakes in this grand duty which you have given him to perform, you will consider them as mistakes, and charge them up to the infirmities of human nature.

Mr. REDICK. Now, Mr. President, we would like to have the Clerk call the names of the witnesses for the respondent, to ascertain if they are here.

The PRESIDENT. The Secretary will call the names of the witnesses.

[Names of witnesses called, and the witnesses answered to their names.]

Mr. REDICK. I would offer, first, in evidence, these mortgages given to the State by David Butler in security for the money—the \$16,000—which, it is claimed, he has not paid into the Treasury.

Mr. ESTABROOK. For what purpose do you offer them?

Mr. REDICK. To prove the security.

Mr. ESTABROOK. We object to them being admitted.

Mr. REDICK. Mr. President and Senators, we simply offer our documentary proof first to save time, and then we will offer our evidence.

Mr. ESTABROOK. I do not understand, Mr. President, or gentlemen, under what rule of law this evidence is offered. I believe I understand, from the counsel, that it is offered under the First Article, or some of the specifications of it; but how that can form a defense I cannot understand. I have not examined them, but I do not know how they can in any degree furnish any defense for the offences proven under the First Article and Specifications. Why, gentlemen, it seems to me to be adding insult to injury. When the Governor, authorized to secure certain monies due the State, and then simply deposit it in the State Treasury, instead of doing so he appropriates that money to his own use, as has been clearly proven before you; and, now, in some way to excuse or disprove the unlawful use of this money, we have here a bushel of mortgages which the Governor has seen fit to give for the appropriation of that money. It is a bold attempt to bolster up a barefaced outrage, by showing that another barefaced outrage has been perpetrated. What have you to do with mortgages? Is not it trifling with the solemnity of the questions which you are about to consider? Gentlemen, I say, if you are men of sense, you will regard this as a positive outrage upon your sense and decency, in this transaction. This act has not semblance of legality. It shows there is something foul upon the face of the transaction put in these mortgages. Did he deposit it in the State Treasury as he ought to do, it is there to-

day. But when he comes up and puts this in your face, it is a *cognovisti* in itself that he has done an act without authority or any kind of legality, as much as though one of you, sirs, or me, should have the power, finding the door open, take that fund and appropriate it to our own use. What excuse is there, in this bundle of nonsense, for a transaction of that kind? I deem it my duty to enter my solemn protest that you shall not be trifled with here, or the interests of the State, by nonsense of this character. I stand here to protest against the outrage, in the name of the Managers and the people of the State. It is adding insult to injury to come here and bolster an action of that kind, by asking you to discuss such a defense as this. Such trifling I object.

The PRESIDENT. The question has been reduced to writing. The respondent offers in evidence the mortgages given to secure the \$16,000 which they claim he has not paid into the Treasurer's office.

Mr. REDICK. So, now, Senators, let us look at what the issue is. We expected to be met by this objection from the counsel on the other side, and in that way, they can make their case, if they have one. We would almost have been willing to submit this case without proof, but, as we have it, we propose to offer it. What are we called upon to prove? They set out in their articles and specifications, that we collected this money in Washington, sent it to Kountze's bank; then sent Brock for it, and that we never put it in the Treasury. Did he deposit it in the State Treasury? If so, then we have a right to borrow it out, and prove the security given. And the issue for you to prove is, whether it went into the Treasury

or not. If it did, we have a right to borrow it out. We did not use the money. It was not put to our own use, but we put it into the State Treasury, and borrowed it out. "It is true that while said money was so deposited, this respondent, as Governor, executed in due form of law, countersigned by the Secretary of State, and attested by the great seal of the State of Nebraska, a power of attorney to one Nelson C. Brock, who was at that time Deputy State Treasurer of Nebraska, authorizing him to endorse the name of this respondent on said warrant so deposited at the First National Bank at Omaha, and receive the proceeds thereof, being the full amount of said warrant, \$16,881.26." Now, then, what do they reply to that? They say that is not true. We say, in our answer, that we gave these mortgages to secure this money. They say, "It is not true; they didn't." What made you respond to our answer, and say it was no defense, no reply; and you lead us into the court to believe that that is the issue, whether these mortgages are secure or not; and then, when we are here, you howl like a peacock on a barn. Now, let us see. Ought it not to be introduced for another purpose? Do you want to cut off the right of David Butler to clear himself of all corrupt intent about this transaction? Do you want to say the State has got no money, when he and his wife have paid this money? It don't cost you anything to have all these facts there; and if Gov. Butler is to have any benefit out of this, let him have it. The law says you can loan the school fund.

Mr. ESTABROOK. It don't say you can loan this fund.

Mr. REDICK. Yes it does. If it was there, we say the law authorized us to borrow. The question is simply,

"did it go into the State fund; did it go into the State Treasury." The money did go into the State Treasury, and it was borrowed out by my client, who has covered up his land with mortgages, so that he cannot do anything with it. He has given twenty-five or twenty-six hundred acres of land to secure this loan. I simply call your attention to this, Senators, thinking you might, thoughtlessly, consider this fact of less importance than it really is. If the money did not go into the State Treasury, that is a different matter; but if it did, then it is right to borrow it out. We will offer mortgages and bonds in evidence to show you that the money borrowed is secured upon 2,500 or 2,600 acres of land. All we ask is, that you give Governor Butler a fair chance to make his case, and then if you find him guilty, convict him.

Mr. ESTABROOK. I don't understand why it is, that lawyers, when they argue grave questions of law, should always indulge in low personalities, in order to secure a laugh in the galleries. I have seen it stated in the Plattsmouth papers that when Redick stood up to speak everybody got ready to laugh. Now, I really don't see what this case has to do with my getting into Congress. It was a hard matter for me to get in, but not at all a difficult matter for me to get out, but it seems to me that my friend Redick finds it even more difficult to get into Congress than I did. (Laughter.) But I think this has but little to do with the subject. The questions before you are graver—they are important legal considerations. Now, with regard to that school money, I read from page 139 of the laws of 1869. "All monies received as advance or full payment by the purchasers of school land, shall be paid by the



officers receiving said moneys, to the Treasurer of the State, specifying whether said money is for common school, or university lands, and duplicate receipts shall be given for said money, one of which shall be filed by the Land Commissioners, and the other shall be retained by the person paying over the money." So it seems by this, that money received for university lands goes in one direction, and that received for school lands goes in another direction. "Such money shall be held as the principal of the general school fund, or as the principal of the university." What money? Why the money arising from the sale of the school lands. It is claimed, under that, that they have a power to invest that money, but I claim, that when that money is brought from Washington and put into the Treasury no man has a right to lay his unhallowed hands on it, until you, gentlemen, as the proper authority, shall say what shall be done with it, but instead of finding the regular little \$17,000 as it was sent by the authorities at Washington, you have this bundle of nonsense referred to you—this bundle of trash and trumpery—instead of having the privilege of going down to this little Dutch Treasurer and asking him to open the vaults of the State that you may look upon the shining dollars, you have offered you this bundle of trash. Now, gentlemen, this is a grave question, and is not to be pooh-poohed; but if it should be brought in, it will be to show the bed-rock on which this defense stands. It is asking you whether you are fools or idiots to receive this kind of thing instead of the hard cash.

Manager DOOM. There is no question in the articles that the Governor has secured this money. About the

25th of May, 1869, the Governor acknowledges to have received this money and from that time up to the date of these mortgages it is acknowledged there is no security for the money at all, and at the present time there is not an indorsement of a single State officer upon these papers.

Mr. MARQUETTE. I would like, on the question of law, to have the privilege of saying one word. This is offered in defense to the first article and specifications. There are two stories to this. They have told theirs and we certainly have the right to tell our story. They claim that we never paid the money over to the State Treasurer; we claim that we did and wish to show it. Now, if, after they have offered their proof, you should turn around and cut us out of our proof, how are we to make our defense?

They say secondly that we corruptly used this money; we deny that, and say we paid it into the Treasury, and afterwards to the Treasurer, the proper custodian of that money suggested a loan to us, which was made, and gave ample security therefor, and we undertake to show that security; and now to call this trash seems to me to be treating this respondent with very little respect. Some persons thing mortgages are as good as cash. My friend Estabrook thinks that this money could not be invested in this way, but I understand that two of the State Attorney Generals say it can. If it be a fact that this is secure, why, then, the State is \$3,000 better off than they were without these mortgages.

Sir, we allege this in our answer and we ask you, in all fairness, to be allowed to make that answer good. We have never, in the defense of this, asked any evidence which tends to prove their specifications ruled out. To-day we ask

some, because it did not allege anything particular against us. We are told, at once, when we put in these mortgages, that this is no evidence! Our case has never been so desperate as to call for any such art as that, and I trust it never will. When they asked to prove any allegation they made in their specifications, we never once objected, but we were asked to prove ourselves. So desperate has grown their case they come in to endeavor to prevent us.

The PRESIDENT. Gentlemen, the counsel for the respondent offers in evidence the mortgages given to secure the \$16,000 which it is claimed he has not paid into the Auditor's office. The evidence is objected to. As many as are of opinion the objection be sustained will, as their names are called, answer "aye"; those of the contrary opinion answer "no."

Senator HASCALL, when his name was called, said: I vote to admit the mortgages in evidence in this case, not for the purpose of admitting proof of a legal loan of the money to Governor Butler, but to explain the defense made by the respondent that he put the money into the Treasury. The issue in the case is, whether the Governor put the money in question in the State Treasury, and the evidence offered may have the tendency to prove that the respondent did put the money in the Treasury.

Secretary called the roll, with the following result:

YEAS—Kennedy, Sheldon—2.

NAYS—Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Thomas, Tucker, Tennant, Mr. President—11.

The PRESIDENT. Gentlemen: Two having voted in the affirmative and eleven in the negative, the objection is overruled.

Mr. REDICK. Then, Mr. President and Senators, I will offer in evidence those mortgages. The Clerk will mark them.

Mr. REDICK. I now offer in evidence the bonds bearing the same date, and going with the mortgages.

The PRESIDENT. The bonds will be offered in evidence.

Mr. ESTABROOK. Under formal objection, the same as the other.

Mr. REDICK. We now want Mr. Patrick.

Mr. Patrick was sworn and examined.

By Mr. REDICK.

Q. Was you present at the June sales of 1869?

A. Yes.

Q. Was you present at the time the lots were sold to Governor Butler, now owned by Mr. Cropsey?

A. Yes.

Q. State, Mr. Patrick, the manner in which those lots were sold to Governor Butler at that time?

A. Block 153 had just been sold, and as we were riding along in the carriage the Governor asked the Secretary, I think, how much that block sold for. He said about \$2,000. The Governor said he would be willing to give the same for the block, and then told the auctioneer to cry it off. The auctioneer cried the lot off from the carriage, standing in the front part. The carriage never stopped at all. He stood up and cried two or three times on the block and knocked it off to Governor Butler for \$2,000.

Q. Were there other carriages?

A. Yes, several; and some were on horseback. It was knocked off to Governor Butler.

Q. Look at that and explain how the name of John Gillespie comes there?

A. I wrote it there myself and rubbed it out, and the Governor told me to do so. At the time he bought this block he bought a piece of land below. I wanted this block myself and he said he was willing I should have it, but as he had built his house—

Mr. ESTABROOK. I object to this giving as evidence anything the Governor has said.

Mr. REDICK. How did that erasure come to be there; who took Gillespie's name off those two lots and put yours on?

A. I did it myself; that's the way it come—

Senator THOMAS. I did not understand how the witness said Gillespie's name came to be there.

A. I wrote it myself. Governor Butler told me to put it down because he did not want to be hoggish about it. I put Gillespie's name down, and then put my name down afterwards.

Q. Did you get the lots the Governor promised you?

A. No, sir.

#### CROSS-EXAMINED.

Mr. ESTABROOK. Did you consider this a fair transaction?

A. I did.

Q. Did you think, when Governor Butler said he would give \$2,000 for the block and the auctioneer said he would take it, did not you think that was fraud?

A. It was sold in the same way other lots were sold; the auctioneer said "I am going to sell quick, bid quick."

Q. Had any other lots been sold without putting up the lots in detail?

A. I think so. I think there were several blocks down in the addition sold in that way, and I don't know that I recollect any particular lot among the residence lots sold this way, but I think there were. I don't think there was any fraud in selling the block in this way. I would not have given that much for the block. He let me have three altogether for \$500. There were twelve lots in the block.

Q. How much would that be per block?

Mr. REDICK. There is no necessity for asking that question. The counsel can figure that out for himself.

Mr. ESTABROOK. I prefer that the witness answer.

WITNESS. I would say that the corner lots were worth about \$200; inside lots about \$150.

Q. You stated in your testimony about what the Governor *would* give; how much did he give; is there any means of knowing what he gave for those particular lots, which he bid off at wholesale?

A. No, sir, I was to pay him \$500 for the three lots; I just put my name down on the memorandum book in pencil. That was all the title any body had at that time. I never got any other title; they were conveyed by the Governor to Cropsey; I told him to sell them; I had never taken out the certificates.

Q. Did you go to the solemnity of rubbing out your name and putting in another?

A. No, sir.

Q. How does it come that they were put down there at so much per lot, in that book?

A. That is the estimate given.

Q. Who estimated them?

A. The Governor himself, after the sales.

Senator THOMAS. Did Gillespie bid off any of the lots in that block?

A. I don't know.

Senator THOMAS. Were you the clerk at that sale?

A. I was.

Senator THOMAS. Was Gillespie's name written there with his consent?

A. I don't know; I think the Governor told me at that time that Gillespie wanted some of the lots.

Senator THOMAS. Did Kennard bid off any lots in that block at that sale, and was his name written on the sale book opposite any of those lots at the time of that sale?

A. He did not bid any of them off. The Governor bid the whole block off, and afterwards sold them to him.

Senator THOMAS. If Kennard's name was not written opposite lots 1, 2, 3, 4, 5 and 6, of that block at the time of that sale, whose name was written opposite those lots at that time?

A. Governor Butler's name.

Senator THOMAS. I understand you to say that Governor Butler's name is written there now?

A. Yes sir.

Senator KENNEDY. Was it customary for persons, other than the three Commissioners, to have lots without issuing certificates?

A. Yes sir.

Q. And without paying the money?

A. No sir. They sometimes were several days before they paid the money, and sometimes they would trade off the lots, or sell them, and then the certificates would be made to them they sold to.

GEORGE W. COLLINS SWORN.

Mr. REDICK. Where do you reside when at home?

A. At Pawnee City.

Q. What is your business at home?

A. I am a lawyer and real estate agent.

Q. Are you acquainted with the value of land in Pawnee county?

A. Yes, sir.

Q. Will you take those mortgages and examine them, and if you are familiar with the lands described in them, state where that land is and what their value?

[Witness examined mortgages.]

A. I hold in my hand the mortgage on the north  $\frac{1}{4}$  of the southwest  $\frac{1}{4}$  of section 18, township 9, range No. 6—80 acres.

Q. What is the value of that tract?

A. I do not know anything about that, it is in Lancaster county.

Q. What is the number of it?

A. No. 19.

Q. Please examine No. 1?

A. No. 1 is a piece of land in Pawnee county. The northeast  $\frac{1}{4}$  of section 17, township 3, range 11.

Q. What is that land worth per acre?

A. No. 1, on w. e.  $\frac{1}{4}$  section 17, township 3, range 11. I would not pretend to say what it is worth. The approximate value, and I would arrive at that from the fact of having sold other lands, I think it is worth, perhaps, \$6 or \$7 per acre—no more; that is, if I remember right.

Q. Is that a fair cash value of it?

A. I think that is all it could be sold for at the present time.

Mr. REDICK. Now take No. 2.

A. No. 2, on s. e.  $\frac{1}{4}$  section 17, township 3, range 11. I would put this about the same value.

Mr. REDICK. Now, the next one.

A. No. 3, on s. w.  $\frac{1}{4}$  section 1, township 3, range 10. That piece of land is not, I think, worth more than \$5 per acre.

Mr. ESTABROOK. Is it worth that?

A. I could not swear, positively; not more than that. I would remark, if admissible, that this land was, at the time, all in the books of our office for sale, up to the time of the issue of the first mortgage; but since then that land has not been offered for sale.

Mr. REDICK. Take the next one.

A. No. 4, on w.  $\frac{1}{4}$  of n. w.  $\frac{1}{4}$  section 25, township 2, range 11. That is a piece of ground that lays adjoining our town site at Pawnee City; there has been none sold recently; judging from what has been sold near it, I should call that worth \$100 per acre; will sell for that; part of it is laid out.

A. I have now No. 5, on s.  $\frac{1}{4}$  of s. w.  $\frac{1}{4}$  section 24, township 2, range 11. There is a piece of land adjoining that on the south side, belonging to a man of the name of Stebbins, who asks \$75; his has some improvements; I would say \$50.

A. I have now No. 6, s. w.  $\frac{1}{4}$  section 25, township 3, range 11. I should call that worth not more than \$6 an acre.

A. I have now No. 7, on s. w.  $\frac{1}{4}$  section 17, township 17. I don't think that is worth any more; it is on the same section that the two quarters mentioned before is on; one of those three quarters is not so good as the other; I would not put one at so good a figure as the other; I would not call this worth more than \$5 per acre.

No. 8, on s. e.  $\frac{1}{4}$  section 22, township 2, range 11, \$6 per acre.

No. 9, on n. w.  $\frac{1}{4}$  section 17, township 3, range 11, \$6 per acre.

No. 10, on w.  $\frac{1}{4}$  n. e.  $\frac{1}{4}$  section 25, township 2, range 11, \$30 per acre.

No. 11, on n. w.  $\frac{1}{4}$  section 21, township 3, range 11, \$5.50 per acre.

No. 12, on the s. w.  $\frac{1}{4}$  section 23, township 3, range 11, \$6 per acre.

No. 13, on the n. w.  $\frac{1}{4}$  section 20, township 3, range 11, \$6 per acre.

No. 14, on n. e.  $\frac{1}{4}$  section 20, township 3, range 11, \$6 per acre.

No. 15, on n. w.  $\frac{1}{4}$  section 14, township 3, range 11, \$7 per acre.

No. 16, on e.  $\frac{1}{4}$  n. w.  $\frac{1}{4}$  section 25, township 2, range 11, \$35 per acre.

No. 17, on n. e.  $\frac{1}{4}$  section 15, township 1, range 12, \$15 per acre.

Some, I think, ask a good deal more than this; I think that will be the cash value.

No. 18 I know nothing about; that is Lancaster County land.

Mr. REDICK. State your familiarity with those lands?

A. Well, in the first place, in connection with my law business, I have been engaged in the real estate business since I have been in that county, and have a knowledge of the lands there. In the next place, this particular property was on our books—Collins and Babcock—for sale, and we made it a point to make a personal examination of all the lands we offered for sale; I have personally examined these lands.

#### CROSS-EXAMINED.

Mr. ESTABROOK. Where was it on your books for sale?

A. Well, I cannot state exactly.

Q. When was it that they were taken off your books, and at whose instance?

A. It was about the time the mortgages were sent down there to be recorded. We received a note from the Governor not to sell that land.

Q. Did you see the mortgages when they were sent there to be recorded, and, if so, are these the mortgages?

A. I don't think these were the mortgages. I saw one mortgage.

Q. Was it either one of these?

A. No, sir.

Q. Was that mortgage which you saw recorded?

A. My impression is that it was not.

Q. Did you have money to invest—a loan office, as well as land agent?

A. No, sir. I have generally been pretty hard up, and kept that way since I came here.

Q. Have you bought lands for other parties?

A. Yes, sir.

Q. And loaned money for others?

A. No, sir.

Q. Have you ever known money to be loaned there?

A. Yes, sir.

Q. Are the prices fixed by you the prices that, in your opinion, would be

fixed to loan money on—that is, would you, as a loan agent, be willing to loan money on those lands at the prices you have given?

A. I think I would.

Q. Are these lands improved?

A. I think I stated there was but one piece improved.

Q. How far is that land from Pawnee City?

A. They lay from about adjoining town to six miles from town.

Q. How far do the six dollar tracts lay from town?

A. I think that they vary from five to nine miles—may be some of it not more than eight miles.

Q. Is it timber land?

A. No, sir, it is all prairie land.

Q. Is it in the midst of a densely settled agricultural community?

A. Well, I think it is not very densely settled.

Q. Is it sufficiently settled so that the highways are fenced out?

A. We have a general herd law in this State, I believe.

Q. You are trying to be a little smart, ain't you?

Mr. REDICK. No; that's a fact, General.

Mr. ESTABROOK. Why do you estimate one piece worth \$100 per acre?

A. Because it is.

Q. Why is it?

A. Because it is adjoining the town, and is laid off in town lots.

Q. Do you know at what value these different lots were assessed?

A. I do not.

Q. Are you the agent for others who owned land in that vicinity?

A. Yes.

Q. Who?

A. Various others.

Q. Are you an agent for Mr. Cropsey?

A. I have his lands for sale on our books.

Q. Is that the price he asks for his lands?

A. I think there are none so low as that.

Q. Are they not bounded by a hedge?

A. Most of them by a young hedge.

Q. What price does he require you to put upon them.

A. From \$7 to \$10.

Q. State whether you have been able to sell either Mr. Cropsey's or the Governor's lots at those prices?

A. We have not tried to sell the Governor's, and the Colonel's are in the hands of several others.

Q. Have you sold them for any of those prices?

A. We have never sold but one piece, and what for I could not tell.

Q. Where was that?

A. In Pawnee county, in the vicinity of some of these lands, but not adjoining.

Q. What was the value of the Governor's lands in the vicinity of the lands you sold for Mr. Cropsey?

A. The value of the Governor's land I fixed upon is \$6, I think.

Q. Did you sell Mr. Cropsey's for that?

A. I do not remember.

Q. Was Cropsey's in the vicinity of that?

A. No. It might be two or three miles.

Q. What did you get for it?

A. I told you once, I don't remember. I could not say distinctly.

Q. Do you say you can sell lands for cash, five miles from Pawnee City, at \$6 per acre?

A. Yes.

Q. Would it sell for that upon execution of mortgage?

A. I could not tell you. You might try it.

Q. Would it, in your opinion, sell upon execution of mortgage for that price?

A. I don't know that my opinion is of much value to you.

Q. Will you answer the question?

A. I will if it will do you any good. My opinion is that if it is worth that it would sell for that. If it was not, it would not.

Q. You say that to be smart?

A. Oh! no, I rather imitate you.

Mr. ESTABROOK. That is all.

Mr. DUNGAN, sworn and examined.

By Mr. REDICK:

Q. Where do you live when you are at home?

A. Pawnee City, Nebraska.

Q. Are you familiar with the lands owned by Governor Butler close to Pawnee town?

A. I am not familiar.

Q. Do you know the locality of that land?

A. Only promiscuously. I am familiar with the country, but not with the price of lands.

Q. Are you familiar with the price and value of land averaging from five to nine miles of Pawnee City, in the vicinity of those spoken of by Mr. Collins?

A. I cannot say I am very familiar, yet I know, perhaps, the change of lands, sales, and something with respect to the prices generally put upon land.

Q. Will you state what that is worth?

A. From five to nine miles I should think that from five to twenty dollars per acre would be a fair valuation.

Q. Will you state how you get at that?

A. I have, in travelling over the country, known of instances of sales of lands, and I know of lands to be sold, and also persons having lands to sell. From these three sources I make the conclusions to which I have come.

Q. Were you acquainted with the eighty acre tract, adjoining the site owned by Butler?

A. Yes.

Q. What do you say in regard to the value of that eighty acre tract?

A. With reference to what it would sell for at the present time?

Q. Yes.

A. I can only give you my opinion. I think if the eighty acres was put up for sale it would bring about \$75 per acre in cash.

Cross-examined by Mr. ESTABROOK.

Q. Do you recollect the tract spoken of by Mr. Collins, which he said was worth about \$50 per acre?

A. Yes, sir, I think I took cognizance of it as being on the east of this, I think it would sell for about \$40 per acre, if it is the land I take it to be. I don't know the tract he said was worth \$30 per acre, nor do I know anything about the

tract he said was worth \$35 per acre.

Q. Do you have an abstract of these lands?

A. Yes, sir.

Q. Did you examine it critically?

A. Yes, sir, as carefully as I could.

Q. Did not you state that these lands were worth from \$5 to \$20 per acre?

A. Yes, sir.

Q. Mr. Dungan, what is your profession?

A. I am a preacher of the gospel.

Q. Do you deal in lands?

A. No, sir. I have some lots and some land. I get my knowledge of the value of these lands from my knowledge of the country, and talking with the people.

Q. Have you known of lands being sold within a year, within from five to nine miles of Pawnee City?

A. I don't know of lands being sold ranging within that distance, but I can call to mind school lands that have been taken about six miles north; they are generally about the roughest that I know of. They are taken on a credit. I have known a tract within five miles, or something like that, of Pawnee City as having been sold within a year for \$4,000. I think there was about 50 acres improved, and I think there was a small building containing one room, on the land; no outhouses that I know of; there might have been some trees out; I think there were no fences excepting pounds or lots for cattle.

Q. Have you known any naked prairie land sold within this distance during the last year?

A. There was a sale about to be completed when I left Pawnee City; about six miles from Pawnee City, and my recollection is, at about \$12 per acre.

Q. How do you know lands are worth what you say, if you have not known anybody to sell?

A. I have not said I have known of none being sold. There have been sales made, but not being in that business I can't recollect the particular tracts.

Q. If there are a good many, you can recollect one, certainly?

A. I am not able to call to mind lands sold of which I can give the approximate cost.

Q. I ask you if you have known any sales of unimproved lands within the last year, within 5 to 12 miles of Pawnee City?

A. Yes, sir. But I am not familiar with the names of the parties who bought them or sold them. I heard at the time, but putting no importance on it, I made no inquiries.

Q. If you don't know anything about the price for which land sold, how do you put a price upon these lands in this section?

A. I got it from passing over the country, in addition to what I have stated these sales, from what I get from the general valuation put upon these lands. So far as my calculation of what land ought to bring, if I am correct, they ought to bring about their value, and I think I tried to state about their value.

Q. Now do you believe that those lands would be good security for the loan of money at one half the amount you state?

A. Yes, sir.

Q. Do you believe if put up at auction in Pawnee City, they would bring one half that sum?

A. Yes, sir.

Q. Would they bring the whole sum?

A. Not unless there was more money there than there is now.

Q. Well, sir, at a forced sale would they bring one half that amount?

A. Not unless a due notice was given, and men came in who wanted lands in that vicinity.

Q. If a man should loan money on that land, and in order to get his money, he had to put it up, with proper notice, and sell it under the hammer, would it bring half you stated—how do you answer that?

A. I answer that in the affirmative.

Q. Still you have not known an acre of it sold, during the last year, even at private sale?

Mr. REDICK. He has not answered that, I believe.

Senator KENNEDY. How far is Pawnee City from a railroad, and how far from the Missouri River?

A. It is about twenty-five miles from the railroad depot, where we do business, and about forty miles from

the trading point on the Missouri River.

DR. MCKESSON sworn.

By MR. REDICK:

Question.—Where do you reside?

Answer.—Near by Lincoln.

Q. Are you familiar with the value of lands in and about Lincoln?

A. I am, sir.

Q. Look at those mortgages and state what was the value of the lands described in them at the date of the mortgages?

A. This mortgage covers the southwest quarter of section 28, town 28, range 6. I should judge that piece of land worth about \$10 an acre.

Q. What is the number of that mortgage?

A. Number 18.

Q. Take up the other description and give your judgment on that.

A. Worth about the same.

Q. Now, will you tell the court why you fix that valuation?

A. My means of knowledge?

Q. Yes.

A. My knowledge of the sales around Lincoln.

Q. Do you think that a fair valuation?

A. Yes.

By MR. ESTABROOK:

Q. Do you mean, when you say a fair valuation, that if it were put up at an authorized sale, to pay a mortgage deed, or a judgment and execution, that it would bring that sum?

A. That is my opinion. I sold a piece the same distance from town at \$12 per acre.

Q. Could you sell it at private sale at all, for \$10 per acre?

A. I think I could sell it for that.

Q. Could you by advertising and forcing the sale?

A. I don't see what the difference would be about the cost.

Q. Do you know the assessed value?

A. No.

Q. How far does it lie from Lincoln?

A. Well, the one piece is two miles west and about six south. The other in the same vicinity.

Q. Any timber?

A. No.

Q. Any improvements?

A. I don't know.

Q. Any water?

A. I do not know.

Q. Any stone or rock?

A. I could not say. There is stone in the vicinity.

Q. You say it is good security for money at 10 per cent.?

A. I will give \$10.

Mr. REDICK. I now offer in evidence the abstract and title, showing it all straight and clear from the Governor right down.

Elder YOUNG sworn and examined.

By Mr. REDICK:

Q. Where do you reside?

A. In Lincoln.

Q. Are you familiar with the value of lands in and about Lincoln?

A. I presume I have a tolerable knowledge of the value of land in this country.

Q. Look at the description in those mortgages, and state what those lands are worth in your opinion?

A. I think those lands would be worth from \$6 to \$10 per acre; would depend how the land lay; might be worth \$10 and not over \$6.

Q. Now look at the other and state the value of that?

A. I would say the same.

Q. Now, tell the Senate how you arrive at that conclusion.

A. I own a piece of land on the south side of township 9, just on the line of the township, that I hold at \$10 per acre, with a little improvement on it. I gave that for it.

Q. Do you know of any lands being sold in that vicinity?

A. I know of land being sold three miles out. Some at \$25 per acre, just west of the creek.

CROSS EXAMINED.

By Mr. ESTABROOK:

Q. You say you hold yours at \$10?

A. Yes.

Q. Have you offered it for sale?

A. Yes.

Q. Have you sold it?

A. No.

Q. Would not you take \$8?

A. Not a cent less than \$10 per acre.



Q Would you be willing to loan your money on security, the same as the tract described in that, and at ten per cent.?

A. No, I would not. I would expect to get a loan about its value.

Q. What would this be worth as security for a loan?

A. It would be worth from \$5 to \$7 per acre.

Q. This particular tract you say is worth from \$6 to \$10. What would be the minimum and maximum as a loan?

A. You must make your own conclusions. If I was loaning money I should expect to have about one-half or two-thirds.

Q. Did you hear the Doctor describe it?

A. His description does not satisfy me.

Q. If this was about six miles west and two south of this town on the prairie, with no water, stone, or timber, what would it be worth as security for a loan?

A. I think land in that part of the country would be reasonable security at \$5 per acre.

J. S. CHURCH sworn.

By MR. REDICK:

Question.—Where do you reside?

Answer.—Brownville.

Q. Mr. Church, state whether you had any conversation with the State Treasurer, James Sweet, last winter a year ago, in Lincoln, in regard to this five per cent. fund, which it is claimed Mr. Butler got. If you had such conversation, tell how it was raised; whether he went to you or you to him?

A. I was in the Legislature when the committee was appointed, and I was the Senate member of that committee. We called for a report from the Auditor as to the amount of moneys deposited in the State Treasury. He reported the amount of money deposited, and we did not find this \$17,000. We went down to Mr. Sweet's bank to see the Treasurer, and find why it was not there. We told Sweet that we had seen in the Omaha papers that Butler had gone to Washington to secure this money, and had brought it to Omaha. We asked him when this money was brought from Omaha and deposited in the State Treasury.

He said it was deposited in May, 1869. I asked him for the amount, which I remember was \$16,881.26. I got the amount and the date of the time it was deposited in the State Treasury; then I went to the Governor because I wanted to know his story; then I went to the Auditor and got his story. Finding that these stories did not agree, I went back to Mr. Sweet again, and wanted to know the real differences. Sweet told me he did not know anything about this money; did not know whether it was there, or whether it had been there. All he knew about it was, he saw an item on the books where this amount was credited to David Butler, and he thought that was the amount. He said he did not keep the books; Brock kept the books; Mr. Brock was away getting married, or on a wedding tour, or something. He could not give me any satisfaction about it. The first time he seemed to know all about it, and the second time he knew nothing about it. At the first conversation he said there was no doubt about the money being in the Treasury. The Governor told me that part of it was out; he had checked part of it out. The first time I went down and asked him particularly whether it was there, he said it was.

Q. The question you wanted to find out was whether it entered the Treasury; to know whether it was all there proper and safe.

CROSS-EXAMINED.

By MR. ESTABROOK:

Question.—Were you a member of a committee to investigate this matter?

Answer.—No, sir; our matter was limited to what the building commissioners had done. I did not call upon him in the capacity of a member of a committee, simply to inquire, as a member of the Legislature, what had become of this money.

Q. Did not Sweet tell you something after, that he saw "17," and supposed it was "17,000," but afterwards found it was hundreds?

A. No, sir; he said he found 16,881.26; he did not know how it came there, or anything about it, it was Brock's business.

Q. Did he turn to his books?

A. Yes, sir.

Q. He didn't tell you whether it was on the Treasurer's book, or the bank book?

A. No, sir.

Q. The second time you went he didn't know anything about it?

A. He said he didn't.

Q. Did he tell you why the Governor had drawn it out?

A. No, sir, not that I remember.

Q. Did he say anything about the Governor putting it into his dwelling house?

A. He said something about that.

Q. Why did you go to see if that money was there?

A. Because the Auditor did not report it.

Q. Did the Governor tell you anything about taking certificates of deposit for it?

A. No, sir.

Q. What time was that?

A. During the extra session of the Legislature, sometime in February or March, 1870.

Senator THOMAS. What was the difference between the story of the Treasurer and the Auditor?

A. The Treasurer said it was in the treasury and the Auditor said it was not there, as a reason he did not report it.

Q. What was the difference between the Governor's statement and the Treasurer's?

A. The Governor said that part of it was out, but the Treasurer said it was there.

Q. How long time elapsed until you went back?

A. All the same day.

Senator THOMAS. How did the Governor claim he had drawn it out?

A. My impression is that he checked it out; that is he drew a check upon the bank.

Q. He didn't say anything about borrowing it?

A. No, sir, not to me.

Mr. ESTABROOK. Did you have the exact amount?

A. No, sir. I referred him to the amount I had seen in the papers—\$17,000.

Senator THOMAS. I see your report is dated the 1st of March. Can you fix the time from that?

A. It was about the 4th of March. H. D. HATHAWAY sworn.

Mr. REDICK. Where do you reside?

A. At Plattsmouth.

Q. State whether you was ever present at a conversation between the Treasurer, Mr. Sweet, and yourself and others, with regard to the five per cent. fund being in the treasury or not, and if so, state where it was and what was said?

A. I was present when there was a conversation about that fund at the meeting of the State Central Committee, at Omaha, a few days prior to the election. The Governor was present, called there by the Committee to answer certain charges against him, among them this five per cent fund. Mr. Sweet was also present a portion of the time. Some member of the Committee called the attention of the Governor to the charge of his appropriating this fund, and he made a statement to the Committee that the money had been brought from Washington by Mr. Taylor and deposited in the First National Bank at Omaha, and he had given a power of attorney to Brock to get the money, and that he had got it and brought it to Lincoln and deposited it in the State Treasury; and sometime after Mr. Sweet said to him that the money—

Mr. ESTABROOK. I object to the witness telling what the Governor stated Mr. Sweet said.

Mr. REDICK. Did Mr. Sweet assent to what the Governor said?

A. After the Governor had made this explanation he turned to Mr. Sweet, and asked him if it was so, and he said "yes." My impression is that Sweet afterward made a similar statement before a portion of the committee.

Mr. ESTABROOK. He never made his statement, and simply asked Mr. Sweet if that was so, and he said "yes?"

A. He made the statement, I think. I talked some with Mr. Sweet. I am not positive in regard to that. I think Sweet stated in substance to the committee what the Governor said.

Q. Did the Governor say anything about having secured that sum?

A. Yes. He said it was secured.

Q. How?

A. By mortgages on land.

Q. Was the question raised as to whether the mortgages were recorded?

A. I think not at the meeting of the committee.

Q. Was not that a question that was distinctly urged, that they were a shame and never recorded?

A. I think not. I heard this talked of and I went and asked the Governor, and he said he made the mortgages, and that they had been executed, as I understood him; and whether they had been placed on record or not he said he did not know.

Q. What did Sweet say?

A. I am not positive.

Q. Did Sweet say there was a loan of that fund to the Governor?

A. Yes.

Q. Did he tell when?

A. I think he did.

Q. And the loan was all secure and right, did Sweet say?

A. I think so.

Q. He did it to satisfy you that everything was right?

A. It did satisfy me.

Senator THOMAS. When did this conversation take place?

A. I could not be positive. It was a few weeks prior to the October election. I think it was the latter part of September.

Mr. ESTABROOK. Who was the chairman of that committee?

A. I believe Mr. G. W. Ambrose.

Q. Were you present at the first session?

A. Yes.

Q. What was that committee called for?

A. That is more than I could tell you.

Q. Was it not stated?

A. The chairman said he had thought it best to call them together and consult. I think Mr. Ambrose said he had thought proper to call the meeting together that Mr. Butler might be present and understand about these charges.

Q. What charges?

Mr. REDICK. I object.

Mr. ESTABROOK. I ask what

charges were there made in regard to this particular fund?

A. I would not be positive whether it was stated to the Governor that he was summoned there for the purpose of answering any charges of that kind or not. The understanding was that the meeting was assembled for the purpose of talking over the matter.

Q. Were all the members present?

A. No.

Q. Was the proposition made to the Governor to withdraw?

A. I think not. That was talked of.

Q. Did that fact come to his knowledge?

A. I do not know.

Q. Did the Governor make a statement in regard to this five per cent?

A. He did when his attention was called to the general report. He made the statement that Mr. Taylor had brought the money from Washington to Omaha, and deposited it in some bank, but afterwards gave Mr. Brock authority, as Deputy Treasurer, to go to Omaha for the money. He did so, and deposited it in the State Treasury, and that he had borrowed the money out at the instance of Treasurer Sweet.

Q. Did he state when he had made the loan?

A. I think he did.

Q. Did he state he made the loan about the time he made the deposit?

A. My impression is, not a great while after that.

Q. Did you understand he had made the mortgage to secure the loan, at the same time he made the loan?

A. They spoke about the mortgage being made, but I don't remember whether they stated the day. Mr. Sweet assented.

Q. Was anything said about having received certificates of deposit?

A. I think not.

Q. By neither Sweet nor the Governor?

A. My impression is, it was not.

Q. Did you ever hear of it?

A. I have; but not before the election.

Senator THOMAS. Did the Governor state where the mortgages then were?

A. I think not. The idea I got from the conversation was that the mortgages had passed from his possession, and had been properly carried over and taken due process of law.

Senator TENNANT. I move the Senate sitting as a Court of Impeachment, adjourn until nine o'clock tomorrow morning.

The Senate then adjourned.

#### **Eighth Day's Proceedings.**

The Senate, sitting as a Court of Impeachment, met at 9 A. M. Roll called. All present.

J. W. HOLLINGSHEAD sworn for defense.

Mr. REDICK. Where do you reside?

A. When at home, at Pawnee City.

Q. How long have you lived there?

A. Nearly ten years.

Q. Are you acquainted fully with lands in and about Pawnee City?

A. Yes, sir.

Q. Are you acquainted with the lands Governor Butler has mortgaged to the State as security for a sum of money?

A. I have a personal knowledge of it, besides a general knowledge.

Q. State what, in your opinion, land that lays about seven or eight miles from town is worth per acre?

A. I should say it would run from five to eight dollars per acre.

Q. Are you familiar and well acquainted with the four tracts owned by Governor Butler close to Pawnee City?

A. Yes, sir.

Q. Will you state what that tract is worth, joining your land?

A. I should say \$75 or \$100 per acre.

Q. What are your means of knowing the value of lands near Pawnee City?

A. Ever since I have been in the country I have been a kind of "free land agent." When a stranger came to enter land I would go with him

and show him the land free. I obtained prices of land from parties selling lands.

Q. Did you make out an abstract to the title of these lands?

A. Yes, sir.

Q. Is it clear?

A. All but three pieces, which have a mortgage upon them uncanceled. It is like this; the mortgage is over a half section of land, but in making out a description of the land, a mistake was made, and more land was included than was intended. The mortgage was given to Payne, and the record shows it is not cancelled. I don't know whether it was paid or not.

#### **CROSS-EXAMINED.**

Mr. ESTABROOK. When you say the land is worth so much per acre, what do you mean?

A. I mean it would fetch that if duly advertised—capitalists would buy it.

Q. It is not selling at that now, is it?

A. I know that there is not any land within five miles of the city selling at less than five dollars per acre. I don't think there is within ten miles.

Q. Is that land worth the prices you have fixed, as security in a mortgage for the loan of money?

A. Yes, sir; I rather think it would.

Q. Do you think, if put up for sale, after thirty days' notice, it would bring that amount?

A. Yes, sir; I think all the land that is mortgaged would bring twice the amount of the mortgages.

Q. You refer to naked prairie land without timber?

A. Yes, sir.

Q. Would it bring that any day?

A. No, sir; not without advertising.

Q. Where is the \$50 land situated?

A. It is adjoining the town on the east.

Q. Is there any timber or living water on it?

A. No, sir.

Q. Is the town site laid off on it?

A. No, sir.

Q. Does its proximity to the town make it worth that much?

A. Yes, sir, to be divided into five and ten acre lots.

Q. How much land does Pawnee City include?

A. The plat at the present covers near 300 acres.

Q. How many inhabitants are there in it?

A. From 500 to 700, I should guess.

Q. How many votes were cast in the whole precinct?

A. I don't remember. I know that in that school district we got, in a few hours' time, 97 voters' names to a paper to send up here. My opinion is there is about 120 voters.

Q. How will the ratio of inhabitants run to the voter?

Mr. REDICK. General, I suggest that this testimony is not proper.

Mr. ESTABROOK. How many business houses are there in Pawnee City?

A. There are four dry goods and general stores, two exclusive grocery stores, one boot and shoe store, and two drug stores. I could not say as to the number of buildings.

Q. How many streets are there?

A. Three—one main street and two cross streets.

Q. How far does this \$100 land lie from the main street?

A. About 180 rods.

Q. Is not your value based upon the prospective growth of the city?

A. Yes, sir. I estimate its value at just what it would bring.

Q. Don't you know that that tract is in the market?

A. I don't know. I think it was offered to a friend of mine about three years ago.

Q. Let me call your attention to the N. E.  $\frac{1}{4}$  Sec. 3, T. 11. Where is it situated in relation to the town site?

A. It lies a little west of north of the city.

Q. What is its value?

A. I cannot give other than the general value which I have given.

Q. Would you be willing to take it at \$5 per acre as security?

A. Yes, sir.

Q. What is the general assessed value of that land in Pawnee county?

Mr. REDICK. Mr. President, I object to that question.

The PRESIDENT. The counsel will reduce his question to writing.

Mr. ESTABROOK. What is the value at which the tract in question,

which you say is worth \$5 to secure a loan, is assessed at?

Mr. REDICK. I object. The question is submitted to writing.

The PRESIDENT. The counsel for the Managers asks "What is the value of the lands in the county generally, which you say are worth \$5 per acre to secure a loan—assessed value?"

Mr. REDICK. Here is an officer, a township officer, going around assessing land, putting his own judgment upon it; and your own experience has no doubt taught you the incorrectness of this estimation. I know myself I frequently pay upon the assessed value three times as much, and sometimes five times less than I would take for the property. It is, technically, proper testimony; but it is not fair to bring in an assessor who estimates, at his own judgment, and the only way we can get at the average value of these lands is to put on the stand such a man as Mr. Hollingshead is. To introduce the assessment roll would be an imputation upon your good sense. We make the objection because it is purely illegal and unfair.

Mr. ESTABROOK. In the first place, I want it distinctly understood that we don't regard any part of this inquiry, as to the value of these lands, as having any place here. It is not material whether there were any mortgages or not. These mortgages have never seen the recorder's office, and never been used as security; never acknowledged. The date is a long time before they were acknowledged, and they are suspicious, conveying the idea of fraud upon their face. So far as that, Mr. Redick is right; but we come here, and we think we live in the commercial metropolis of Nebraska, the initial point of the Union Pacific Railroad. I think I am safe in saying that, there being no one here from Council Bluffs; and we have seen

speculators come into our city and have known land agents hang on to their coat-tails to ask them to pay eight, ten or twelve dollars per acre, within twelve miles of Omaha. It is a little startling to me that away, in the southwest corner of the State, where there is no railroad or anything, to find gentlemen coming here and freely declaring property is worth, for a mortgage to secure these lots, if put up at auction, as much as in a city with 16,000 inhabitants, and in the vicinity of the Union Pacific Railroad. Hence, it is now a matter how it is that these values are arrived at; by what means. Well, the Governor, the defense, put upon the stand individuals by whom they make the price two or three times as much as it really is; ministers of the Gospel, and who declare they don't deal in land and never saw any sold, except in one instance; and here we come and find a very intelligent gentleman, who says he knows in regard to the assessment rolls and records, and all about that region of the country. And I recognize him as coming from Wisconsin, where I myself came from, and therefore I respect him; and I ask him what he knows about the values, and I ask him what he knows about the assessments. He says he has a knowledge. Now the gentleman says he has no means of arriving at the facts; has to bring in promiscuous gentlemen, ministers and doctors, who don't know anything about it. What are assessors? An assessor is appointed as one of the best posted men in the community, and hence, while all other men may have a deputy, he cannot have one. Then, too, he goes out and takes a solemn oath that he will properly perform the proper duties, and he goes, and each individual, declares, under oath, ex-

actly what he believes his land to be worth. If there is any better way to get at the value of land, where the assessor and individual both swear to its value; if there is any better means then I don't know what it is.

If we take the number of votes cast at our elections, and multiply it by five, in this country, we have more inhabitants than there are. Now, here is a tract of land, lying within 120 miles of this little hamlet, that is worth, for security, \$100 per acre. Why? Is it improved? No. Is it covered with timber? No. It is because of its contiguity to the big city of Pawnee.

**Mr. MARQUETTE.** Mr. President and Senators, I shall not attempt to discuss the merits of the testimony, as the gentleman has. It matters not, Senators, what is the price of lands around Omaha. May be since the removal of the capital from Omaha, lands in that vicinity have come down. It don't matter what lands in Omaha is worth. I might tell you that in Cass county, ten or twelve miles from Plattsmouth, lands sold for twelve dollars an acre. But this has nothing to do with it; this is not testimony. What the assessor says down there, as to the value of land, is not testimony here. I have had some experience in that there, because I have had several suits, and have undertaken to bring in the assessors. One suit was like this: The railroad ran across a corner of a piece of land, taking off three or four acres. The assessed value of the land was \$600, and they wanted \$25 for these few acres. I wanted the assessment admitted as evidence in this case, because the owner of the land had made the assessment; but the Judge told me I could not introduce an assessment to prove the value of land. In that case the

assessed value was \$600, but the land proved to be worth \$3,300 and the improvements \$1,500; so if we could have got the assessment in as evidence it would have been quite an item.

The PRESIDENT. The question is on the objection. As many as are in favor of the objection being sustained will, as their names are called, answer "aye." Those of a contrary opinion will answer "no."

The Clerk called the roll, and the vote was taken with the following result:

Ayes—Messrs. Brown, Cropsey, Gerrard, Hascall, Hilton, Kennedy, Thomas, Tucker, Tennant, Mr. President.

Nays—Messrs. Hawke, Metz, Sheldon.

The PRESIDENT, Ten gentlemen having voted in the affirmative, and three in the negative, the objection is sustained.

Prof. JOHN MORRIS, sworn.

Mr. REDICK. Where do you reside?

A. In Saline county, here.

Q. Look at those mortgages and state to the Court whether you are familiar with the value of the land described in them, and if so, what it is worth per acre.

A. This is in section 28. I believe I have been over the land, and know the locality very well. I believe that to be worth \$10 per acre, and perhaps a little more—\$10 certain. This other section I have been over several times; was on it last Monday and looked carefully over it. I was running a State road along side of it. When I examined it I thought it was too valuable to run over with the road; that the State would not want to pay the damages and so I followed the section line. That is worth from \$10 to \$12 per acre. I can see the land from where I am sitting looking out of the window.

CROSS-EXAMINED.

Mr. ESTABROOK. What is your profession?

A. An architect.

Q. Was you the architect of this building?

A. As much as there is of it.

Q. Are you acquainted with the penitentiary lands?

A. Yes, sir.

Q. There is some quite close to this land?

A. Yes, sir.

Q. Is the land in that mortgage worth any more than that land?

A. Yes, sir; it lies different from this. This is cut up with draws, and in making the State road across it I had to make curves because of them; but this is good table land.

Q. What is the value of that penitentiary land?

A. From \$5 to \$6.

Q. What would be the relative value of that piece?

A. I think the penitentiary lands are worth from \$5 to \$8, the minimum value.

Q. Would you be willing to loan money on that land at the price you put on it?

A. I would be willing to loan money on it at from \$5 to \$8 per acre.

Q. Do you think it would bring that amount if put up and sold?

A. That is my opinion.

Q. Would the penitentiary lands bring that?

A. If they were the same, or the same quality.

Q. Would that land be good security for the loan of money at \$5 per acre?

A. Yes, sir. I don't know of any land within eighteen or twenty miles in that direction that would not be pretty good security, at the minimum, for \$5.

Q. Do you think it would bring that amount, \$5, at any time?

A. Where there is land buyers in the country.

Q. Would it bring that now, do you think?

A. I do not know, sir.

Mr. ESTABROOK. That is all.

Mr. REDICK. Mr. President and Senators, I believe that is all our testimony on the money loan.

Senator THOMAS. I would like to ask the counsel for the respondent if

they have offered the abstract of the title of the lands?

Mr. REDICK. Yes, sir. Here it is.

CHARLES W. SEYMOUR sworn and examined.

By Mr. REDICK:

Q. Are you acquainted with James Sweet, the Treasurer of this State?

A. Yes.

Q. How long have you known him?

A. I think about nine years.

Q. State whether you was present at the city of Omaha during the month, perhaps, of September of 1870, and heard a conversation between Sweet and Governor Butler, relative to the five per cent. fund being in the Treasury, and relative to who induced Governor Butler to borrow it out, and state what it was and how it arose?

A. I was present at a meeting of the Central Committee in September, 1870, I think, and my recollection of the conversation that took place there is very nearly the same as related by Mr. Hathaway. That Governor Butler went on and made his statement, as stated here by Mr. Hathaway, and Mr. Sweet assented to what was said.

Q. What was Butler's statement about the five per cent. fund?

A. He went on and stated how that he had been to Washington and had secured the fund, and that he had made arrangements with E. B. Taylor to bring the money on. It seems he left Washington before Mr. Taylor, and Mr. Taylor brought the money and placed it in the First National Bank at Omaha. He then stated that he and Brock had had some conversation about the fund being there, and that he had given Mr. Brock a power-of-attorney to go there and get the money, and place it in the State Treasury; that afterwards, I don't know how long, Mr. Sweet had suggested to Governor Butler that he had better borrow the money and secure the State, as the money was in the Treasury and not drawing interest. After this statement was made he then turned around to Mr. Sweet and asked him if these were not facts, or something to that effect. Sweet said it was, and then went on to explain the reason

why he had suggested. The reason Sweet gave was that the money was in the Treasury and not drawing interest, and it would be better for the State that the Governor, or somebody else, should borrow it and thus secure the State.

Mr. REDICK. That is all.

CROSS-EXAMINATION.

By Mr. ESTABROOK:

Question. What time was it?

Answer. I think it was on the 17th of September, 1870, when this conversation took place.

Q. Did Butler say he had secured it by mortgages at that time?

A. I so understood.

Q. By one mortgage or more?

A. I do not remember whether he used the word mortgage or mortgages.

Q. Did he go into details?

A. No; I merely understood him to say he had secured the State by mortgage or mortgages.

Q. Was there a question raised as to whether the security had been filed and recorded?

A. I do not know. There was something about the mortgages having been sent for record, but I don't remember.

Q. Don't you know what was one of the questions raised to induce the Chairman to bring the Central Committee together?

A. I do not know what the object was. I received a telegram without any explanation.

Q. From whom?

A. From Ambrose.

Q. Are you a member?

A. Yes; and when I got there I did not know what we were called together for, particularly any more than they said there were certain charges preferred, and they desired to know whether they were true, or something to that effect.

Q. Was there any question raised as to the power to loan this money?

A. I think some member may have raised that question.

Q. Did Sweet, in that conversation, refer to the particular time when he had urged the Governor to make a loan and secure it?



A. I do not think he gave any date. My idea was that it was after he put the money—after it had been put into the Treasury by Mr. Brock.

Q. State whether it was not there proposed or thought of, at least, the question discussed, whether Governor Butler could not be removed or displaced as a nominee for Governor on the Republican ticket?

A. Yes. One or two men wanted to remove him without evidence.

Q. Well, what was one of the propositions submitted?

A. There was no proposition submitted, and no action taken.

Q. Did the committee have, jointly, any conversation with Governor Butler on the subject, whether he would do it or not?

A. I do not know whether any conversation of that kind took place before the committee or not. I know this, that these men who wanted to remove him without evidence, may have said something of that kind.

Q. Did the statement the Governor made satisfy the majority of the committee?

A. I do not know how the balance of the committee felt, but I relied on what Mr. Sweet stated about this fund, and in addition to that there was a report from Brock, after which Mr. Sweet pointed on that statement where this money was.

Q. What was that statement?

A. It was submitted by Mr. Brock.

Q. What was the condition of those funds?

A. The funds were in the hands of Butler, borrowed from the State Treasurer.

Q. I ask, where, at that time, the committee found that fund to be?

A. At that time they found that Governor Butler had borrowed it from the State Treasurer.

Q. After that you were satisfied as a committee?

A. I was satisfied.

Q. Was you satisfied he had given proper securities for it and to make the State safe?

A. Yes. From what Sweet and the Governor said. Sweet stated the money had been placed in the Treasury.

Q. Did he state he could give you

knowledge on the subject that would contradict Butler's statement?

A. That is what he told us.

Q. Did he claim to have knowledge of what was in that exhibit, except what that exhibit showed on the face?

A. No, sir.

Q. What exhibit was it?

A. It was the one published in the *State Journal* I think.

#### RE-EXAMINED.

Mr. REDICK. The gentleman on the other side asked you where you found this fund. You answered that you found the Governor had borrowed it out.

A. We found that it had been paid to Mr. Sweet, and Butler borrowed it of Sweet.

Q. You said something about a mortgage?

A. Yes, sir, I will make a statement to you. There was a first mortgage made which covered the whole tract of land. This was taken up, and these other mortgages taken.

Senator THOMAS. State all that was said about the mortgage having been sent to the County Clerk for record?

A. My recollection is that the mortgages had been given to Brock, and he had sent them down.

Mr. REDICK. What was said by Sweet, if anything, about Butler having paid one year's interest upon the loan of this money?

A. I think Governor Butler made this statement, and Sweet assented to it.

Mr. ESTABROOK. Did you know that he was acting as a particular friend of Governor Butler's to get him out of this scrape?

A. No, sir; I did not know anything about this. I only know we had our session in the evening, and he was there, and made these statements.

Mr. Seth Robinson called. No answer.

C. H. GERE, called and sworn by the defense:

Mr. REDICK. What is your business, and what has been your business for three or four years?

A. I have been for the last three years editor, and one of the publishers of the *State Journal*.

Q. Was you present yesterday, or the day before, when Mr. Brock made a statement regarding a statement published on the 23d day of September, 1870.

A. Yes, sir; I wrote the statement, which was copied from the original statement, in the Treasurer's office, which was signed by Nelson C. Brock, Deputy State Treasurer. I was not present when it was being got up. I did not know anything about it before it was prepared.

Q. State if you know about the time the statement was prepared, whether Governor Butler was in this city?

A. He was not. I know from the fact that this settlement was got at the Treasurer's office on Monday, the 19th day of September. I know that on Thursday, the 15th, the Governor had an appointment at Beatrice. On the following day, the morning of the 16th, he came through town, but did not get out of his carriage. He caught the train, and I went up with him to Omaha. That evening there was a meeting of the Central Committee and I returned the next day to Lincoln. On the 19th, which was Monday, I first heard of this statement, and got it. It was published in the *State Journal* the next day. I will state that I did not publish it the same day, because I went away with Mr. Kellogg, private secretary to the Governor, who took the original statement to Plattsmouth, where we met Governor Butler, who looked it through, and then it was sent to Mr. Ambrose.

Q. Who took it over, you and Mr. Kellogg?

A. We did.

Q. What did you hear Sweet say—or Brock, if anything, about the recording of these mortgages given for the loan of the money?

Mr. ESTABROOK. Upon what theory, do you ask, gentlemen, to offer the hearsay evidence of Mr. Brock?

Mr. REDICK. We have laid the foundation for his impeachment—and he was acting State Treasurer, and we

claim that all the statements of Brock, as such, are competent testimony.

I will put the question in this way—State what Brock said to you about the recording of the mortgage given by Governor Butler to the State, at the banking house at Lincoln?—(To Mr. Estabrook) Now do you object to that, sir?

Mr. ESTABROOK. Yes, sir. Senators, I will state that which Brock has said is not competent unless it is desired to impeach his testimony, and in order to do that, they must ask if he ever said so and so, fixing the person to whom he said it, the time and the place; and if he answers no, or that no such conversation occurred, then it is competent to bring witnesses to contradict him, and that is the only rule of evidence on which hearsay testimony can be admitted.

The PRESIDENT. Gentlemen, the counsel for the respondent has asked the witnesses the following question (question read). The question is objected to by the counsel for the managers. Have the counsel anything to offer?

Mr. REDICK. Now to support that question we think it is very meet for you to know by whose fault this mortgage was not recorded. Even although the mortgage was not recorded it would bind David Butler to the State, and the recording will not figure except to show the *bonafide* transactions. We are introducing this simply to disapprove the charges they have brought against him. We are here to prove that David Butler is not guilty, but we go further and show that this mortgage is in the hands of the State Treasurer, and that Brock told Sweet to attend to it months ago, to which Mr. Gere will swear. We want to make this thing as clear as the noon day sun, that that man has not

done a thing that is not right before the people; and to satisfy you, Senators, that that man did nothing wrong; and if there was any neglect in not recording these mortgages, it is not our fault.

Mr. ESTABROOK. I would like to ask the counsel if they claim they have laid the ground for the impeachment of the witness Brock?

Mr. REDICK. Yes, sir, we do.

Mr. ESTABROOK. Then if you put it on that ground we want to see the evidence first.

Mr. REDICK. We claim its admission on another ground, which Mr. Marquette will show—on the broad gauge.

Mr. MARQUETTE. Now, an attempt has been made here to prove that this money never went into the State Treasury by what Mr. Butler said. They say he told Brock, when he went for the money, not to put it into the Treasury, but to his credit. We contend he never said so. How are we to prove that? We say Mr. Brock went and got the money, as the State Treasurer. We prove that by what Brock did and said. The parties there are the Governor of the State and Mr. Butler. Mr. Brock is the agent of the State. Most certainly if what David Butler would say is evidence against him, what the State would say against her agent would be evidence against the State. Let us read. "Greenleaf on Evidence," page 159, sec. 113.

"The principal constitutes the agent his representative, in the transaction of certain business; whatever, therefore, the agent does, in the lawful prosecution of that business, is the act of the principal, whom he represents. And "where the acts of the agent will bind the principal, there, his representations, declarations, and admissions, respecting the subject matter, will

also bind him, if made at the time and constituting part of the *res gesta*."

Now, would it be denied, for one moment, that we could not show the acts of Mr. Brock in putting this into the Treasury. The authority says if we can show his act we can likewise show his declarations. He admits he got this money, and the only question is whether he put it in the State Treasury or not. If you allow him to come in here to swear himself clear, and not allow a word he has said outside to contradict, it would be a one sided matter. We simply ask that his acts and his declarations, which go to show what they were, he gave in evidence, to show the nature of this whole transaction. We think it lawful and ask it fairly.

Mr. ESTABROOK. Mr. Redick makes a statement full of joyful encouragement. He says before we get through with this thing, he will prove David Butler as pure and innocent as an unborn babe, or words to that effect. This will be cheerful evidence to be promulgated to the people of Nebraska. If he will show David Butler clear and pure in the charge now under consideration, and will show that money deposited in the State Treasury, and that it is there now, or if he will show it has been drawing interest, or handled at all in the way the law contemplates he will entitle himself to the thanks not only of the present generation of Nebraska, but the generations through all coming time. In regard to the law involved in the question before the Senate, they propose to prove an independent statement, gathered as they were traveling about the streets, made by Brock. This, I think, no one will contend, was contemplated at the time. No foundation was laid to impeach him upon this charge. I sub-

mit to you whether it would be better to prove what he stated at that time, than to go into the streets and ask Mr. Brock himself what it was. He is competent and why not bring him?

Mr. REDICK. We fixed the place.

Mr. ESTABROOK. You might fix a place; and he says "no." I don't pretend to say you could not bring him in to state he did not. They propose to catch up what he might have said walking around these streets at the time of a fierce political campaign, where he has said he was suborned to make statements that were not true in order to shield Governor Butler, and now it is proposed to come in here and have an individual retail it second-hand. He may be at the sound of my voice. Now, if you have any reputation at stake as lawyers, I imagine this course will not be pursued. I think we have been bound right down close to the rules. I don't know of an impeachment trial carried out so strictly as in the present; and if so wide a departure as is claimed here is to be allowed now, I don't know what doors may hereafter be opened. I ask simply that the pound of flesh be allowed, drawing no blood.

The PRESIDENT. The question, in its present form is—"State what you heard Sweet say, or Brock, if anything, about the recording of these mortgages given for the loan of this money?"

Mr. REDICK. I object to that, unless the foundation is laid to impeach him.

The PRESIDENT. Gentlemen, the question is objected to. Shall the objection be sustained? As many as are of opinion that the objection be sustained will, as their names are called, answer "aye;" those opposed will answer "no."

The following is the vote;

Ayes—Cropsey, Gerrard, Hascall, Metz, Sheldon, Tennant—6.

Nays—Brown, Hawke, Hilton, Kennedy, Thomas, Tucker, Mr. President—7.

Senator KENNEDY explained that he voted to show the conversation.

The PRESIDENT. Six gentlemen having voted in the affirmative, and seven in the negative, the objection is overruled.

Mr. REDICK. Now will you state what was the conversation about those bonds and mortgages in Sweet's banking house?

A. I saw the mortgages there and told Brock they had better be sent down for record. He said he did not want to send them without an order from Sweet. I sent a telegram to Sweet for an order. Brock said that this whole trouble about this thing originated in the carelessness of Mr. Sweet; that Sweet had agreed months before to draw these mortgages, and his objection to sending them down there was, that it would not look well to send them down just at that time.

#### CROSS-EXAMINED.

Mr. ESTABROOK. Have you seen the mortgages?

A. I saw them at that time.

Q. Have you seen the mortgages shown here?

A. I think not. I should have said there was but one mortgage there.

Senator THOMAS. Can you fix the date?

A. It was the forepart of September; about the time that the question first started about the securities, in the newspapers.

Mr. ESTABROOK. Was there anything said in that conversation about ante-dating the mortgages?

A. I don't remember that there was.

Q. Did not he say that he had been requested by Governor Butler to ante-date the mortgage and certificate?

A. I don't recollect it.

Q. Don't you know that he said the trouble was, the mortgages were ante-dated, and that Butler wanted him to ante-date the certificates, and

he did not want to do it, and said he had sent them to Sweet?

A. I don't recollect.

Q. Did you see the date of the mortgage?

A. I did; but don't know the date now.

Q. Did you see, yourself, that the mortgage was ante-dated?

A. I suppose it was.

Q. Do you know about the time the mortgage was prepared?

A. I think, perhaps, it was prepared in the month of September.

Q. But it bore date sometime in the spring of 1869?

A. Did not notice the time. I did not notice the date of the acknowledgment.

Senator THOMAS. What mortgage was Brock speaking of. By whom was it signed. In whose handwriting was it written?

A. The mortgage was signed by David Butler and Lydia Butler. I can't say whose writing it was in. It was to the State of Nebraska. Brock was speaking of the mortgage given by Butler to secure the loan of \$15,000. That's my impression, but would not be positive it was \$15,000.

Senator HAWKE. Was the mortgage you speak of properly acknowledged?

A. I could not swear whether it was properly acknowledged or not, but my impression is there was an acknowledgment. I did not examine it to see as to the legality. I cannot say before whom it was taken.

Senator THOMAS. What property was mortgaged therein. What was the date thereof?

A. I cannot swear to the date, and can only answer generally as to the property. I think it was the property in the county of Pawnee. I know it was, from the fact that the mortgage was to be sent to Pawnee City for record.

Mr. ESTABROOK. You stated, I think, the amount of the mortgages?

A. I said my impression was that it was about \$15,000. That is simply the impression I had at the time. I can state how I got that impression.

Q. Well go on.

A. At a conversation at the bank with Mr. Brock, he told me that the Governor had borrowed \$15,000 of

this school-fund. This was but a few days prior to the other conversation. All during September.

Q. What has become of the first mortgage?

A. I heard the Governor say it was sent down to Pawnee county. I understood him to say that it was not recorded, by the request from him not to do so.

Mr. REDICK. State all that he said about that?

A. He said that the reason he did not want the first mortgage recorded, was that it tied up all his lands in one, and that if he wanted to sell any of it he would have to procure the release of it, and that he had it made out in separate mortgages.

Q. Did he say it was done with the consent of Sweet or Brock?

A. I don't know.

Senator THOMAS. When was that mortgage made. Tell all you know on that subject, either from your own knowledge, or from conversation with Governor Butler?

A. I did not see the mortgage made. I don't recollect of ever hearing Governor Butler say when he made it out.

Q. Did Brock say in that conversation when it was made?

A. I don't recollect that he did. I don't think that subject came up.

Q. Where is that mortgage now?

A. I only know from hearsay. I have heard the Governor say that it was cancelled. I simply heard the same that he has made in his official message to the House. I don't know anything from my own knowledge.

Mr. REDICK. Did the Governor say where it was?

A. No, sir; I never heard him.

Mr. ESTABROOK. You heard him say that it was cancelled?

A. I heard him say so.

Q. That he had recalled it from Pawnee county?

A. Yes, sir.

Q. When?

A. Sometime last fall.

Q. During September?

A. No, sir, after that.

Q. After election?

A. I think so.

Senator THOMAS. Was that mortgage made on the day it bore date. State all you know on that subject

either from your own knowledge or from conversation with the Governor?

A. I can only state my impression, which I have stated before. I cannot recollect any conversation which I have had with the Governor regarding the date of that mortgage, and cannot say where I got my impression, but I suppose from the many stories, or common rumors, or something of that kind.

Q. Was it made on the date reported?

A. I have answered that. I only had a general impression that it was.

Q. Can you state in whose handwriting the bonds and mortgages which have been offered in evidence, are written?

A. I think that is in the handwriting of the Attorney General of the State at that time, Robinson. It looks like his handwriting. They are all the same.

Senator SHELDON. Was that mortgage sent to the County Clerk of Pawnee county for record, and if so, do you know why it was not filed on the records of said county, as they do not appear on the records from the abstract of said county?

A. I can only state what I have before in regard to that. I do not know of my own knowledge about it, but I have heard—

Mr. REDICK. Mr. Gere, I don't think you ought to state what you heard.

Senator KENNEDY. Was that mortgage made with a view to silence the talk of Governor Butler's political enemies, as regarded the five per cent. fund?

A. Not that I know of. I suppose it was made to secure the loan.

Mr. ESTABROOK. Don't you know that the primary object was to silence the clamor raised at that time?

A. I cannot state.

Q. Well, what is your impression—as you have been very free with your impressions here? Was not the primary object on the part of the Governor, to silence the clamor during the political campaign?

A. I don't think it was.

Q. Was not that one of the objects?

A. I can't state what object the Governor had.

Q. Then how do you know the object was to secure?

A. You asked my impression.

Q. Now, I ask you again your impression as to whether this was not one of the objects to silence the clamor?

A. I do not know. It possibly might have been. I have nothing to found that upon.

Q. I am asking your impression in this case, as in the other.

A. My impression is simply a doubt. I don't know whether it was.

Q. You have no impression?

A. I have a doubt. It might have been or not.

Q. In your opinion, would that mortgage have been made at that time had not the question come up at the political campaign?

A. In my opinion the mortgage would be made at any time that Mr. Sweet had sent the form to be signed.

Q. But that particular mortgage?

A. I cannot say.

Q. What is your impression?

Mr. REDICK. Put that in writing, and I'll object to it.

Mr. ESTABROOK. You don't like the impressions of this witness?

Mr. REDICK. He has answered you four or five times.

Mr. ESTABROOK. We will waive it.

Mr. ESTABROOK to witness:

Q. If you think it was done in good faith—your relations are very intimate with the Governor?

A. Tolerable.

Q. If this was done in good faith to secure the State, how do you account for the fact that the giving of the mortgage was delayed from the spring of 1869 to September, 1870?

A. I can only state from what Mr. Brock stated—that Sweet had agreed to draw the mortgage, and had not done it through his carelessness.

Senator THOMAS. I did not hear the answer to the question—If the mortgage was sent did it not appear on record?

A. I cannot say anything further on that point than I have. I don't

know, except what I have been told. I have heard the Governor say that he wrote to the County Clerk not to record it, for the reason I gave.

Senator THOMAS. How long after it was sent?

A. I do not know when it was sent. I think this message was sent, probably in November, 1870.

Senator THOMAS. Can you state when the Governor was sent down there?

A. No, I cannot.

Mr. ESTABROOK. Did he send the request with the mortgage to the County Clerk?

A. He did not send the mortgage, that ever I heard.

Q. Can you state why it was sent, and the document was not recorded in the usual way?

A. No.

Q. Don't you know the reason was, because it was not acknowledged?

A. No. I supposed it was acknowledged.

Q. Were you not, at the same time, the Governor's private secretary?

A. No.

Q. Are you not a partner of his in the printing business?

A. No.

Mr. REDICK. State how long you have been Governor Butler's private Secretary?

A. From the time he took his office until the spring of 1868.

Q. State whether you are familiar with his transactions during that time, as his private secretary?

A. I think with the most of them.

Q. State whether you know of any transaction between the Governor and the State that was not entirely honest?

A. During the time I was his private secretary, I did not know of any dishonest act of the Governor's, either to the State or private individuals.

A. W. KELLOGG recalled.

Mr. REDICK. I wish to ask you whether you recollect carrying a certain statement, sworn to by Mr. Brock, and where you carried it to.

A. I carried it to the Governor at Plattsburgh, as he was to speak there that night. It was made to the Auditor. I took the statement down there, as I wished to see him and then mail

it. The signature was made in the handwriting of Mr. Brock. At the time the statement was made, Governor Butler was not in Lincoln and knew nothing about it.

#### CROSS EXAMINED.

Mr. ESTABROOK. Do you not know in whose handwriting this was?

A. It was in General Robinson's or Colonel Webster's.

Q. Did you have a conversation with Brock, with regard to that statement?

A. I did not. I did not know what the statement was in regard to at that time.

Q. Did you know anything about the time this mortgage was prepared?

A. No, sir.

Q. Did you have charge of the papers in the Governor's office?

A. Yes, sir. I think the mortgage had been in the Governor's office a month or so. All these mortgages were in the clerk's office for record, until yesterday.

Q. Was that statement to which you referred yesterday, the only statement with regard to the condition of this public fund made for publication?

A. I think he made another one for Mr. Ambrose for publication. I think it was different.

Q. Did you ever have any conversation about this with Mr. Brock?

A. Yes, sir.

Q. Did you not know from that conversation that it was made to assist the Governor in the political campaign?

A. I know after this statement was made. Ambrose came down and wanted him to make a statement; Brock refused at first, but afterwards made it. It was somewhat different.

Q. Don't you know he made both of them to have their effect on the political campaign?

A. I suppose they were made to be used in the campaign, as they were made at that time.

Q. Don't you know that Brock made more statements with regard to this matter in the office of the Governor?

A. I don't know that he did; I know that none of them were made when the Governor was here.

Senator THOMAS. When were the bonds and mortgages, which have been offered in evidence, placed in the possession of the State Treasurer, and how long did they remain there?

A. I am unable to state. They were there, I should think, about the last of December or the first of the year, but I am not positive.

Mr. REDICK. I would like to ask this witness a question if you won't object—Did you hear Governor Butler say why he got those mortgages from Pawnee county, and if so, for what purpose?

A. I do not know.

Q. State how long you have been in the employ of the Governor as private secretary?

A. Since July, 1868.

Q. Are you familiar with his transactions?

A. I think I am.

Q. Did you know of any of his transactions but what were straightforward and honest?

A. No, sir.

Senator THOMAS. When did you first see the bonds and mortgages offered in evidence?

A. I think it was about the first of this year. I either took them to the Treasurer's office or got them of the Governor.

Mr. ESTABROOK. Didn't you convey them to the Treasurer's office?

A. I think I did.

Q. Was the Treasurer there?

A. Yes, sir, or his deputy.

Q. Do you know of their being filed?

A. I think so.

Senator GERRARD. I desire to ask Mr. Gere a question. (Mr. Gere resumed his seat in the witness chair.)

Q. Is the statement published in the *State Journal*, of which you have spoken, the same as made in the Auditor's office by Mr. Brock as Deputy Treasurer?

A. I think it is the same, with one difference. There was in the statement of the investment of the permanent school fund, as furnished from the Auditor's office, an item of \$20 invested in U. S. 6's, which, by a typographical error, was left out of the published statement.

Senator THOMAS. What statement?

A. Published September 23, 1870.

SETH ROBINSON sworn.

Mr. REDICK. What has been your business in the last three or four years?

A. Practicing law here.

Q. State if you was Attorney General during 1869 and 1870?

A. Yes, sir.

Q. Do you recollect the circumstance of Governor Butler arranging with Mr. Brock, to go to Omaha and get certain money there belonging to the State?

A. I was not present when the arrangement was made, but I recollect the circumstance. I drew a power of attorney for him.

Q. State whether Mr. Brock knew it was the five per cent. fund which he was going to get?

A. He did know it.

Q. State how he knew it?

A. The Governor ordered me when I came in, I believe in the morning, to draw a power of attorney for Mr. Brock to sign the warrant and receive the money. I told him I thought an open letter would answer every purpose. Mr. Brock was not there at the time and the matter was left until Mr. Brock came up and he insisted on having a power of attorney. He mentioned the strictness of the banks, and the Governor suggested that the bill was drawn to him as Governor, and in order to satisfy both quibbles I put the power of attorney under the great seal of the State of Nebraska. There was considerable talk about the money arising from the sale of lands, and being the five per cent. fund. Brock did not say much but listened to the conversation. Governor Butler wanted the power of attorney to show that it was State money and not his.

#### CROSS-EXAMINED.

Mr. ESTABROOK. The object of this conversation with you was to show you how he wanted the power of attorney drawn, and directed to you individually?

A. Yes.

Q. Was the law referred to, or discussed at all, under which this money was drawn?

A. I believe not. He mentioned it as the five per cent.



Q. You understood it yourself?  
 A. Yes.  
 Q. Is Brock a lawyer?  
 A. I think not.  
 Q. But do you know he understood it as you did?

A. I regard him as a man of ordinary intelligence, and if his intellect was in a normal condition he must have known it.

Q. You think every man whose intellect was in a normal condition knows all about the five per cent. fund?

A. It was stated by the Governor that it was the State money, in Mr. Brock's presence. The Governor executed it as Governor.

Q. What did Brock say about it himself to induce you to believe he knew what the fund was?

A. I don't think he said anything.  
 Q. You took it for granted he knew, because he was a silent listener?

A. Yes. What Brock insisted on was the power of attorney.

Q. Did not he state, as there was a doubt about it belonging to the people or the Governor, that he wanted it to be sent to meet both cases?

A. No. He did not say.

Mr. ESTABROOK. You say you are Attorney-General. How did you receive your commission?

A. I received it in the ordinary way.

Q. No, sir. Who appointed you?

A. I got my commission from the Governor.

Q. Who appointed you?

A. I received the appointment from Governor Butler and the commission.

Mr. REDICK. Who was your rival for the same appointment?

A. I believe Mr. Estabrook.

Q. Experience Estabrook?

A. Yes.

Q. Was not he your main rival?

A. I believe he was.

Q. Who drew the original law making it proper to appoint an officer like that?

A. I believe Mr. Estabrook.

Q. Estabrook! Experience Estabrook! Do you know at whose particular suggestion it was prepared?

Senator THOMAS. Mr. President, I think that is not the question.

Senator THOMAS. Do you know who drew the first mortgage which

was made by Governor Butler to secure the five per cent. fund, and before whom it was acknowledged?

A. I did know who drew the mortgage, from having seen it, but I would not testify in whose writing it was. I think I knew at the time. I have my impression now.

Senator THOMAS. What is your impression?

A. My impression is it was in the writing of Mr. Kellogg.

Mr. ESTABROOK. When was this former mortgage drawn?

A. I think in May, 1869.

Q. Was the mortgage submitted to you as the law-officer of the State?

A. No.

Q. Was not your opinion taken upon it by Governor Butler?

A. No.

Q. When did you first see it?

A. I saw the mortgage this past fall, after September.

Q. Don't you know whether, from the conversation you had with the Governor, or other source conveying knowledge, that it was ante-dated?

A. I think it was. I think it was not drawn on the day it bore date.

Q. Don't you know it was drawn sometime in the fall and after the election?

A. My impression is after the election.

Q. Well, during the month of September?

A. I would not say it was not drawn in August.

Q. Don't you know it was drawn for the purpose of meeting the clamor?

A. I was not here during the clamor.

Q. Was it drawn before you went away?

A. Not to my knowledge.

Q. Do you know who returned it from Pawnee county?

A. I know what I have heard.

Q. Did not you see the accompanying title?

A. No.

Q. Don't you know that the certificate upon it of acknowledgment was not subscribed?

A. Well, sir, the mortgage was handed to me. I threw it open, but never read the mortgage through.

Could not tell whether it was acknowledged or not. I understood there was a defect which Mr. Sweet regarded as material in the mortgage.

Q. Did you learn it from the Governor?

A. I learned it from the Governor that Mr. Sweet had reasonable objection.

Q. As to something in the body of it, or the certificate?

A. There was a defect somewhere. He also gave me the same reasons as testified—that is to his desire to have a mortgage returned.

Q. Were you consulted in regard to these other mortgages now before the Senate?

A. Drawn under my supervision in December last.

Q. Do you know what became of them immediately?

A. I gave them to the Governor to have his wife execute and acknowledge them.

Q. Were they so executed. Was you present?

A. I know the Governor executed all the bonds in my presence, and the mortgages also.

Q. Was his wife there?

A. No. He was to take them home.

Q. What was his object in executing these mortgages at that time?

A. I suppose one was to give to the State a valid security for the loan of the money, and it was partly at my instance. I had been requested previously to draw the mortgages but had not been able to get the separate tracts of land. At that time we got the description.

Q. Was not one of the objects, as expressed by the Governor, to meet the storm he expected would be raised in regard to the deposit of that fund?

A. That is a mere matter of inference. I think it was at the time the mortgages were drawn. I could not testify as to his motives.

Q. What was one of the motives?

A. I can't say as to his motives.

Q. Don't you have reason to believe that these mortgages were fixed up to silence the clamor?

A. No sir. I think one of the main motives was to give security for this loan,

Q. Do you know from your own knowledge, or from what you learned from the Governor at that time, what had become of the fund for which this land was security?

A. He told me at first that he borrowed \$15,000, and afterward that the building fund was running low and he paid some estimates. I do not think he had checked it out and paid estimates on his own house.

Q. Don't you know that he loaned \$10,000?

A. I have had nothing to do with any such loan. I know of no such loan.

Q. How many mortgages did you draw up at that time?

A. I drew up at one time, seventeen bonds and mortgages; on the next day, I think it was, I drew two more, making nineteen bonds and mortgages. This was not after the meeting of the present session of the Legislature.

Senator THOMAS. What bonds and mortgages are you speaking of?

A. The mortgages shown here.

Q. Did you draw them up yourself?

A. I did not do the writing, I had the supervision of them. I think I drew them all in December last past.

Q. Do you know whether they were taken immediately to the Recorder's office?

A. I have no personal knowledge on that subject.

Q. Have you any knowledge obtained from the Governor?

A. Yes sir, I advised him to attend to the matter, and have them recorded. It was very soon after this that they were drawn.

Q. Was this advice given to him to send them off, made in view of having them there to meet this coming storm?

A. I did not anticipate any storm; my object was, as a friend of the Governor, to be ready to meet any inquiries the Legislature might make.

Q. Did not you know that, up to that time, there was no security at all, which could be enforced in law?

A. I know there was a prior mortgage, which I think was enforceable.

Q. In conversation with the Governor, did you understand that this \$15,000 had been loaned to the Governor by the State?

A. Yes, sir, I understood it was borrowed in the regular way.

Senator THOMAS. I understood you to say that you made these bonds and mortgages in December.

A. Yes, sir.

Q. I see that one of the mortgages is dated May, 1870.

A. That's a mistake. It should be May, 1869.

Senator THOMAS. Why did you date it May, 1869?

A. Because I understood that the money had been got then and of course interest should be drawn.

Mr. REDICK. Did you get that understanding from Sweet, Brock or the Governor?

A. I think I got it from the first mortgage that was drawn.

Senator HASCALL. State the whole number of mortgages that the Governor executed to the State in the latter part of December last to secure the payment of the \$16,881.26 in question, and also the number of bonds executed.

A. I have stated that my recollection is nineteen bonds and nineteen corresponding mortgages.

Mr. ESTABROOK. You say you superintended the preparation of these bonds and mortgages?

A. I did.

Q. Were there any parties, except Governor Butler himself, to indicate their character, or the property to be embraced?

A. Well, sir, as to the character of the mortgages I did not consult him, and to the property I got them from him.

Q. Was there any body beside Governor Butler indicated that there should be a mortgage?

A. I had some conversation with Mr. Brock.

Q. Was it not purely an individual transaction?

A. Certainly it was.

Q. Don't you know that there were no parties to the contract except the Governor?

A. What contract?

Q. The mortgage.

A. It is not a contract.

Q. What is it, then?

A. It is a deed.

Q. You say as a lawyer, that a mortgage is not a contract?

A. Yes, sir.

Mr. REDICK. He is right.

Mr. ESTABROOK. He is not right.

WITNESS. A mortgage is a deed conveying real estate; it conveys it and leaves nothing to be done. A contract is an agreement to do something.

Mr. ESTABROOK. Then I have learned some more law.

The PRESIDENT. The Chair will request the counsel on both sides to confine themselves to the question. The Chair is of the opinion that this is entirely outside.

Mr. ESTABROOK. Was there any party to the deeds except Butler?

A. Yes, sir.

Q. Who?

A. Him and the State of Nebraska.

Q. Was anybody consulted?

A. No, sir.

Q. Who dictated them?

A. Well, sir, I dictated the forms myself, and I understood the best lands to be put in.

Q. Was not it a matter of caprice with him?

A. He might have deceived me, but I think it was not. It was his judgment.

Q. Did you understand that he negotiated with anybody in regard to the forms of those deeds?

A. I did not.

Q. Did you consult with any one else about drawing the mortgages?

A. I did not consult with anybody, but drew them up myself.

Mr. ESTABROOK. That ain't what I asked you.

Mr. REDICK. That is the question you put, and I insist upon the answer.

Mr. ESTABROOK. No, sir; I was asking you if the Governor was not the sole party to dictate the particular lands and amounts?

A. The Governor gave me the lands himself, and the amount of money to be secured by each piece. I consulted no one, but drew the deeds to suit myself.

Mr. REDICK. What did he say to you that he had done, speaking of drawing the money?

A. I knew previously he had drawn the money. He told me that.

Q. But did he say he had borrowed it all?

A. He told of the school fund.

Q. With whom he negotiated?

A. He did not mention anybody.

Q. Then, as an officer of the State, you dictated the form and insisted on Butler's giving the best land?

A. I advised land of two-thirds more value than the amount of money secured.

Q. And when you took the mortgages to Brock you had a conversation?

A. I took seventeen bonds. He told me there was yet some money unsecured, and I said as soon as I prepared the bonds I would give the security.

Mr. ESTABROOK. When was that?

A. In December.

Q. Do you mean to tell this Senate he looked them over, and knew the property included there?

A. No. The mortgages were not there, only the bonds.

Senator THOMAS. Can you fix the day in December?

A. It would be hard to do that. I did not take the acknowledgment, and have nothing to fix the day in my mind.

Senator THOMAS. Did you see the bonds sent?

A. I would not be positive. I think I did. I know he signed them in my presence.

Senator THOMAS. On the same day on which you drew them up?

A. I think it was.

Senator THOMAS. I would like to know what was done with them?

A. They were handed to me to hand to Mr. Brock, which I did immediately. It was after the usual business hours, and the mortgages were to be executed and acknowledged by himself and wife, and forwarded to Pawnee county forthwith for record.

Mr. ESTABROOK. You were sworn as a witness before the investigating committee. I am told by one of the Managers you stated there the

money was not loaned to Tichenor before your advice was taken; will you state your advice?

A. I don't remember testifying any such thing.

Mr. REDICK. I object.

Mr. Estabrook repeats his question.

A. I had given no advice.

Q. Well, before you prepared the abstract?

A. I stated, I think, this; and I state now, that I prepared the abstract before I prepared the securities. I know I did. The accident that the abstract was not dated was not intentional. I forgot that.

Senator HASCALL. How came you to date some of the mortgages May 25th, 1870, and the remainder May 25th, 1869?

A. I have already stated that the mortgages and bonds were not drawn by me. I prepared a rough form and they were drafted from that by Col. Webster; and where it is written 1870 instead of 1869 it is a blunder, and in my mind it should be 1869 in every case.

Mr. REDICK. We have one or two witnesses yet to call, and one will take a long time. If—

Senator BROWN. I move that the Senate, sitting as a Court of Impeachment, adjourn until 2 P. M.

The Senate then adjourned.

#### AFTERNOON SESSION.

The Senate, sitting as a Court of Impeachment, met at 2 o'clock.

The roll was called by the clerk. All the members present.

J. L. McConnell called by the defense. Not present.

Mr. REDICK. Mr. President, I would like to have Senator Hawke sworn.

Senator HAWKE is sworn.

Mr. REDICK. Have you not furnished, at the instance of Governor Butler, a large amount of supplies for these buildings?

A. I have; some \$11,000 or \$12,000 worth.

Q. Now, in all these transactions, state whether David Butler intimated

to you, directly or indirectly, whether he expected to make a speculation out of it?

A. No, sir.

Mr. ESTABROOK. We object to such questions. We don't wish any such testimony to go upon record.

Senator BROWN sworn.

Mr. REDICK. Will you be kind enough to state whether you had a conversation with Sweet about recording these mortgages, and what he said about it?

A. Yes, sir. I called at James Sweet's office with what purported to be a certificate from the clerk of Pawnee county, which came out in the *Omaha Herald*, and asked him if Governor Butler had given any mortgages. He said he had, on his land in Pawnee county. I told him there must be some mistake about it. He said if there was. It was because Brock had not sent the mortgages down to Pawnee county to be recorded, and said, "Surely, Brock cannot have failed to send them down."

Mr. REDICK. To save time, we will now offer in evidence the resolution of the Legislature, confirming the acts of Mr. Butler.

T. L. MCCONNELL sworn.

Mr. REDICK. Mr. McConnell, were you a member of the firm of Sweet & Brock, two or three years ago. If so, state when that firm commenced?

A. On the 19th day of June, 1868. I continued a member of the firm about two years. I acted as cashier. The duties devolving upon me were to receipt for monies, and pay out money.

Q. State to the Senate if you recollect the time when Mr. Brock was about starting to Omaha to get the five per cent fund?

A. I do.

Q. State whether you had any conversation with Brock in that regard?

A. Yes, sir. Before Mr. Brock started to Omaha, he stated to me that he was going to Omaha to get the five per cent. fund, which had been brought from Washington; and that these funds, in connection with the fund we were about to get in from the

County Treasurers, would make us easy as to the funds in the bank.

Q. What did he mean by making you "easy?"

A. Why he meant that we would have funds to loan. This was the day before he started.

Q. Now do you remember the day he got back?

A. I do. I think it was on the 22d of May. I don't recollect the day of the week.

Q. What time in the day?

A. Afternoon.

Q. Do you recollect of counting the money that day?

A. I do, in company with Mr. Brock, that day and in the evening.

Q. Now do you recollect the amount?

A. Between \$16,000 and \$17,000.

Q. You had the handling of that money?

A. Yes sir, I with Mr. Brock. He acted as cashier some of the time.

Q. What did you do with that money after you counted it?

A. We put it into the same place where we put all of the State funds.

Q. To whose credit was that money placed when you put it into the general pool?

A. I think to either to one or the other of the accounts that represented the State funds on our books.

Q. State whether or not it went to the credit of John Rix?

A. I think not.

Q. To whose credit was it placed?

A. The State's.

Q. In whose name?

A. It would be in the name of Brock, Sweet or John Rix.

Q. Was it placed to the credit of David Butler?

A. No, sir, it was not.

Q. How do you know that?

A. By examining the books.

Q. At that time?

A. No, sir, not just then.

Q. Did you balance your books at that time every night?

A. No, sir, only about once a week.

Q. Will you repeat again how you knew that that money was credited to the account of John Rix or Nelson C. Brock?

A. I think so.

Q. Why do you think so?

A. For the reason that it was not credited to David Butler.

Q. If certificates of deposit had been given to any one for that money, at that time, state whether or not the books would have shown it?

Mr. ESTABROOK. I object to that question.

The PRESIDENT. The counsel for the respondent will reduce his question to writing.

(Question reduced to writing.)

The PRESIDENT. Gentlemen, the following question has been asked the witness.

(Reads the question)

to which the counsel for the managers object. Has the counsel anything to offer?

Mr. ESTABROOK. The books are the best evidence.

Mr. REDICK. (rising) I—

Mr. ESTABROOK. Please sit down sir, until your betters are served. I will tell you when you can speak. Now, Senators, when he asks what entry is on those books he must produce the books.

Mr. REDICK. I am not seeking to show what is in the books at all. It would not be proper to show it because they have been here. I am simply doing what I am authorized to do by laying the foundation to contradict Mr. Brock. And I will show that those books have not so much validity about them, as some books are entitled to. I am asking the cashier of a bank whether if a certificate of deposit was issued something would not appear, that there were no certificates issued else he would have known it. The first part would appear to be leading, but the balance would be proper. If certificates were issued that day, would you not have known it? The question is certainly competent. I want to find out whether, if

certificates had been issued, he would have known it?

Mr. ESTABROOK. I simply desire that whatever—

Mr. MARQUETTE. When the prosecution was proving this part of their case the Senate allowed them to prove certain facts to show what constituted a deposit of money. Now, I think certainly we ought to have the right to show them more fully. Mr. Sweet testified the mode of doing business. This goes to show whether there would have been any certificates issued or not.

Mr. ESTABROOK. In obedience to the rule he adopted, if it is desirable the witness shall state the mode I have no objection. All I desire is that what is testified to about these books shall be with the books open, and then if there is any discrepancy the witness shall point it out, and if there is any tampering with the books, I ask it to be exhibited. They have the process of the Court.—

Mr. REDICK. I will save your time by withdrawing the question. I will ask you, Mr. McConnell, if certificates of deposit had been issued at that time, would you have known it?

A. Possibly I might.

Q. How long was you in that bank after that transaction of depositing the money?

A. About a year.

Q. When did you first hear of these certificates of deposit?

A. During the investigation last winter.

Q. Mr. Brock stated the certificates were in there where you had a chance to see them. How does it come you never saw them in the bank?

A. I don't think they were there.

Q. Now, did you have any conversation with Mr. Brock, in regard to these certificates having been dated back?

A. I did.

Q. When did that take place?

A. When he returned home from his wedding tour, after the investigation. The circumstances were these: During the investigation last winter, I was going home, and had got near the north door of the State House. Gov. Butler came to me and said he wanted I should go to the bank and get from Sweet or Brock the duplicate vouchers for the funds he had deposited in the State Treasury. I said Mr. Brock was absent from the place, but that Mr. Sweet was there; but I would go and see Sweet. I went to the bank and told Mr. Sweet what the Governor wanted, and Mr. Sweet, in company with myself, looked over the books of James Sweet & Brock and the State records, and searched thoroughly, and found no record whatever of the funds; and on Mr. Sweet's being satisfied there was no record of the funds, he severely censured Mr. Brock for not counselling him as to what disposition to make of these funds. When Mr. Brock returned, I stated to him Sweet and I had looked through the books and found no record of that money. He said certificates had been issued and dated back; and he got indignant at Sweet, and said if Sweet would stay at Nebraska City and mind his own business, he would keep the books in such a manner that the State Legislature or Investigating Committees would be none the wiser for looking at them.

Q. Mr. McConnell, will you be kind enough to state what you did, and at whose instance you acted with regard to purchasing State warrants at a discount, when Brock had State funds in his possession?

Mr. ESTABROOK. I object.

The PRESIDENT. The counsel for the respondent will put the question in writing.

(Question is put in writing.)

The PRESIDENT. The question is upon the objection. As many as are in favor of its being sustained, will, as their names are called, answer "aye." Those of a contrary opinion, will answer "no."

Upon the roll being called, the objection was overruled.

Mr. REDICK. What did you do in regard to buying State warrants at a discount when Brock held the funds of the State, and at whose instance?

A. I bought State warrants at a discount, I think, at the instance of Mr. Sweet and Mr. Brock both.

Q. What reason did they give for having you buy them?

A. Mr. Brock's was that he was Deputy State Treasurer, and Mr. Sweet's was that he was Treasurer.

Q. At the time you bought these warrants, who held the State money, and was there money sufficient to pay them at the face?

A. There was at that time. The State money was kept, I think, in the name of Nelson C. Brock and James Sweet, Treasurer.

Q. At what time did the name of John Rix come upon the books?

A. Sometime in the summer of 1869.

Q. How were the State funds kept?

A. For about two months after this law was passed, requiring the Treasurer to keep the identical funds received, I think Mr. Sweet and Mr. Brock, for a short time, kept the State funds separate from the bank funds. With the exception of this time, they were all kept together. I think, during the two months spoken of, the State funds were kept in one envelope. If they had been kept in four or five different envelopes, I would have known it.

Q. How did you come to make the change about keeping these funds?

A. Mr. Brock said something about evading the law. After these two months our bank funds and the State funds were all kept together.

Q. State what you heard, if anything, said by Mr. Brock about the latter part of May or first of June, 1869, about Governor Butler borrowing money—either Brock or Sweet?

A. Well, I think sometime during the summer of 1869 I heard Brock say that Governor Butler had borrowed money from either the bank or the State.

Q. Did he say anything about Butler giving mortgages to secure it?

A. No, sir.

Q. Can't you tell what time in the year that was?

A. It was along in the fall, perhaps September, 1869.

CROSS-EXAMINED.

Mr. ESTABROOK. Was you the book-keeper?

A. No, sir.

Q. Cashier?

A. Yes, sir.

Q. What was your duty as cashier?

A. To recieve the monies paid in and pay them out, and any other duty in the bank aside from book-keeping.

Q. What money was received you took it and gave the necessary papers for it, did you?

A. Sometimes.

Q. Did any one else?

A. Mr. Brock.

Q. Have you a distinct recollection when this money was brought?

A. Yes, sir.

Q. What kind of envelopes was it in?

A. It was brought in a carpet-sack in packages.

Q. Was you in the bank when he came with it, transacting your regular business there?

A. I was.

Mr. ESTABROOK. Not wishing to be offensive, I do wish the witness would keep his hand down from his mouth. We certainly could hear him better.

Q. What did he do when he came in?

A. He said "how do you do?" and said he had got the State funds.

Q. What else did he do?

A. He took the funds out and put them on the shelf where we generally counted funds, and we counted it.

Q. What kind of packages were they?

A. Usual bank packages. I think they were \$1,000 packages.

Q. Did you take them apart and count them over separate?

A. Yes, sir.

Q. Then what did you do with them?

A. Put them in the safe where we kept all the other money.

Q. Did you put them in the same place and in like manner that you would if an individual had come there and made a like deposit?

A. Yes, sir.

Q. Do you know that there was an entry made then immediately?

A. I do not.

Q. Do you know whether then, or afterwards at any time, there was an entry made on the bank books of this money?

A. No, sir; I do not know positively of any entry being made, but an entry must have been made in order to make our books balance up.

Q. Did you have any conversation with Brock at that time?

A. We had a conversation after we had counted over the funds of the bank. He congratulated himself that he had got through Nebraska City without Mr. Sweet knowing he object of his mission to Omaha, and he cautioned me not to say anything to him about it. I asked him why he was so anxious about Mr. Sweet not knowing anything about it and he said that if Sweet knew that we had this as State funds, then he would take half of it to the bank in Nebraska City—he did not mind Sweet having a share in the profits but he did not want to have to divide with Rolfe there.

Q. Did you ever hear Mr. Brock talk with Governor Butler about it?

A. No.

Q. If the entry was made who must have made it?

A. Mr. Brock.

Q. Did you ever examine the book to see whether Mr. Brock made such an entry?

A. Yes.

Q. Did you ever find it?

A. No.

Q. How soon afterwards did you examine the books?

A. About eight months.

Q. From all this conversation with Brock was it understood by you and him that this was to form a fund to aid you in your private banking concern?

A. It was understood it was money we should loan and get a profit from.

Q. That was so understood?

A. Yes.

Q. Have you any knowledge whatever of any certificates having been given for that?

A. I have heard there have been some given.

Q. From whom did you hear?

A. Brock.



Q. How soon after this transaction when you made the deposit?

A. About eight months.

Q. Did you ever see any one of the certificates?

A. I saw, the other day, certificates, but never saw one while I was in the firm.

Q. Never saw an entry of the fund on the books?

A. No.

Q. Do you swear, then, while you was connected with it, there was no such entry upon the books of that bank?

A. I do not.

Q. Was there such an entry?

A. I think there was.

Q. On what book would it be placed?

A. To the credit of either one or three of the funds that represented the State Treasury on our books.

Q. You say you don't know whether it was so placed to the credit of either funds?

A. I do not know.

Q. What about the certificate you said was ante-dated?

A. I said Mr. Brock had stated to me so.

Q. What did you mean by that?

A. I meant that the certificates must have been dated back from when Sweet and I examined the books. No record was found.

Q. Did not he state he first made out certificates, and the money remaining in the bank to be used in their private business?

A. No, sir; he did not.

Q. Did you ever hear of that?

A. I saw it in his statement.

Q. While that fund was there do you know whether Governor Butler checked it out and used it in his private business?

A. I do not think he did.

Q. Do you know?

A. I know he did not. We used it ourselves.

Q. Did not he check out so as to overdraw his account?

A. Not while I was in the bank.

Q. When did you leave the bank?

A. The 23d of May, 1870. I won't state positively whether he had overdrawn. I don't think he had.

Q. Could you tell by reference to the books?

A. I could.

Q. What book would you want?

A. The ledger.

[Ledger produced.]

WITNESS. The index is not here, that I see. I must have it.

[Index produced.]

WITNESS. It is overdrawn.

Q. How much?

A. The account was overdrawn at that date.

Q. To what extent. State what it shows at the last date?

A. December 31st, 1869. It was found to be overdrawn \$7,644.66.

Q. State whether, if an entry were made, it would be made upon either of the books before you?

A. No, sir; it was not. I will state here, that so far as these accounts that were kept to represent the account of the State on the books of James Sweet and Brock, I could not tell from the books what amount was placed to the credit of any different amount at any specified time.

Q. Was it so dim and uncertain, and still would it do to prove itself, and make the account come out all right?

A. The object of keeping the State Treasurer's account with the account of James Sweet and Brock, was to evade investigation. It might be entered under one, or it might be entered under two or three of these different heads. I have testified before that James Sweet and I looked over the books and could not tell.

Q. Can you tell when the books were balanced after this transaction?

A. They were balanced at the end of the week.

Q. Now, suppose that within three days after that transaction, certificates of deposit had been issued to the depositor, would not your books have balanced?

A. Yes. It would have been proof that money had been credited to some one, but to which account I could not tell.

Q. You say that this money in question must have been deposited, and the reason given was, because the books balanced. If these certificates had been given three days after the deposit, but before the books were

balanced, would not that balance the books?

A. Yes, sir.

Q. Suppose those books were balanced on the 20th, this money deposited on the 22d, and certificates given to some person on the 25th, as depositor, would not the books balance on the 30th?

A. Yes, sir; that would be one way of accounting for it, so far as balancing the books is concerned.

Q. Have you any other reason to suppose that this money was entered, except that the books balanced?

A. No, sir.

Q. Then, if it would be balanced by these certificates, that accounts for it reasonably, don't it? That is a rational way of accounting for it, is it not?

A. No, sir, I don't think it is. You understood me in this way. When any amount of money comes into our hands as bankers it must be credited to some one, or else our books would not balance.

Q. Suppose it come in and certificates of deposit are given for it?

A. Then they would balance.

Q. Mr. Brock testified that on the 22d of May, 1869, a credit of \$14,866 was placed to the credit of David Butler. Please look at those books and see if that is so—turn to page 83 of that ledger.

WITNESS. (after examining book) What is the question you ask me?

Mr. ESTABROOK. I ask you whether you find a credit of \$14,866 there on May 22d, 1869?

A. I do.

Q. Are you familiar with this book?

A. I am.

Q. State what you call it in bank phrase. "Stub book" don't you?

A. Yes, sir.

Q. Are there dates there to show when the certificates were separated from the stub?

A. There are.

Q. Look at the 22d of May, 1869, and see what the stubs there show?

A. Yes, sir. I find stubs of three certificates here.

Q. Just read them if you please?

A. "Lincoln, Neb., May 22d, 1869. Deposited by David Butler in favor of himself—60 days' notice, interest at 7

per cent. \$5,000." That is the first one, No. 2264. The second one reads the same, No. 2265 and the third is No. 2266.

Q. Is there anything there that indicates the cancellation of those?

A. They are marked cancelled.

Senatar HASCALL. I would like to ask the witness if those are the certificates he thinks were dated back?

A. I think they are.

Mr. ESTABROOK. Look at the certificates immediately before that and state what are their numbers and dates?

A. No. 2262 and 2263, dated May 22, 1869.

Q. What is the date of the one immediately preceding those?

A. May 21st, 1869.

Q. Now look at the next one immediately after the 22d of May and see what the date is?

A. May 24th.

Q. Now, sir, could those three certificates have been ante-dated, or dated at any other time than is entered there?

A. That I could not tell.

Q. Could that have been done?

A. I think so.

Q. How?

A. It might have been done by leaving three of those not written up until afterwards.

Q. Do you think that is the way these might have been done—these three?

A. It might have been done.

Q. Do you say those two were entered some other day than they are purported to have been?

A. I have stated all the time I thought they were. I will tell you the reason why. Mr. Sweet and I looked over the books thoroughly, and could find no entry in any way, shape, form or manner. Sweet himself was, at the time, satisfied.

Q. Did you look at the State book?

A. Yes.

Q. Did you find any blanks?

A. I could not say.

Q. Look on the 25th of the same month?

A. Yes, I have the 25th.

Q. See what the entry is there?

A. "Lincoln, May 25th, 1869, deposited by David Butler, in favor of him-

self, \$5,000. No. 2,271. Interest 7 per cent. after ninety days." Following is one for \$5,000: "Lincoln, May 25th, deposited by D. Butler, in favor of himself. No. 2,272. Interest 7 per cent. after ninety days." The third: "Lincoln, May 25th, 1869, deposited by D. Butler, in favor of self, \$5,000. No. 2,273."

Q. Were these anti-dated also?

A. No, sir.

Q. You think those were issued at the time they bore date?

A. I don't state positively that they were anti-dated before.

Q. Now, what do you state positively?

A. I think it may have been done.

Q. What is your opinion?

A. It looks all straight.

Q. Is it not your opinion that it was all straight, and they were issued when they bore date?

A. Well, sir, I don't think that we could have been mistaken when we looked over the books.

Q. Look in the same place again. Will you state whether any of those entries along, say from the 20th to the 30th, are in your handwriting?

A. Yes.

Q. Were there any on the 25th in your handwriting?

A. No, sir.

Q. Are there any on the 22d in your handwriting?

A. No, sir.

Q. Well, are there between the 22d and the 25th in your handwriting?

A. No, sir.

Q. Are there any on the 21st?

A. Yes.

Q. Where is the next entry of your own handwriting?

A. May 27th.

Q. Had you access all the while to that book?

A. I had.

Q. Making entries every day?

A. Yes.

Q. State whether it could have been possible those entries could have been made, and the certificates attached to those stubs and separated afterwards, or dated at any other time?

A. Yes.

Q. Explain how it might have been done.

A. It is possible I might not have

noticed it, not keeping the books or feeling interested particularly.

Q. What is your ground for supposing they were anti-dated?

A. Mr. Brock's own admission. He admitted that they were issued and dated back.

Q. Don't that explain the whole thing. That he first issued the first, and cancelled those that they might not draw interest—those on the 25th?

A. Possibly that may be it.

Q. Now, Mr. McConnell, will you turn to the ledger. In the case of those certificates of deposit, would there be any corresponding entries on any books in the bank?

A. There would.

Q. What would be those entries, and on what books?

A. They ought to be written up the same day. They would be on the journal and in the deposit book.

Q. If Mr. Brock is present he could step forward and point it out.

[Mr. Brock points it out.]

A. I have no doubt about entries being on these books as far as that is concerned.

Q. What do you find?

A. I find them here. The entry is in the Journal Entry that David Butler—2,264 is the number of the first, \$5,000; 2,265, \$5,000; and 2,266, \$5,000.

Q. Any other entries in the journal of the same day?

A. First entry of the State Bank of New York.

Q. Could that entry have been made there when you speak of?

A. I don't hardly think it could.

Q. Now, what is your opinion about the date on your book?

A. My opinion is that the books show straight.

Q. Are these the same books which you and Mr. Sweet examined before?

A. Yes, sir; the same books; we must have overlooked these entries.

Q. Now look and see if there are not certain entries on the 25th, of the numbers 2,271, 2,272 and 2,273 for \$5,000 each.

A. Yes, sir; they are here.

Q. Now, does not that entry correspond exactly with the stub found in the stub book?

A. Yes, sir.

Q. Now, how does that entry correspond with these entries on the stub being dated back?

A. I say that the book shows all right. [Another book is placed in the hands of the witness, who is asked what kind of a book it is. He answers, "A Deposit Ledger."]

Mr. ESTABROOK. What do you find to be the account of David Butler on the 23d day of May, the day before you left?

A. That he has overdrawn his account \$16,243.78.

Q. Then you are mistaken about his not having overdrawn when you left?

A. I am.

Q. Now do you know how that book was balanced?

A. I do not.

Q. Do you know of any fund out of which the bank expected the account to be balanced?

A. No, sir.

Q. Now look at the entry of Sept. 12th, and see what entries are made there in regard to the account of David Butler, and see whether there is an entry there of the return of three certificates of \$5,000 each.

A. Yes, sir.

Q. Well, what is the credit there if any?

A. \$15,000.

Q. What date?

A. September 12th, 1870.

Q. Does that balance the account?

A. No, sir.

Q. How does it stand at that date. It is footed up?

A. It is overdrawn \$16,671.40.

Q. Are those books fair on their face?

A. Yes sir.

Q. There are no erasures?

A. No, sir.

Q. State whether you are the Treasurer of the Board of Regents of the University here?

A. I am.

Q. State whether the Governor procured the appointment for you?

A. Well, he assisted me in getting it.

Mr. REDICK. State how you know he assisted you?

A. I knew it eight days after I was elected. Governor Butler stated to

me in his room that he had worked for me.

Q. Did he say anything else?

A. Yes, sir. I think his words were, that that scoundrel Brock had had the audacity to offer him \$750 for it.

Q. Is there anything on those books to show that this identical fund was placed on the books to the credit of David Butler?

A. I don't think there is.

Q. Could not Mr. Brock have placed that fund to the credit of John Rix or himself, as you say you think he did do, and then placed the sum to the credit of David Butler on general principles and the books not show it, and then placed the same amount of the bank money to his credit?

A. Well, he could have done it.

Q. Is there anything on the books to show that he did not do it?

A. No, sir.

Q. The testimony is that these certificates were issued, and then, three days afterwards cancelled them. Is that common?

A. No sir.

Q. If those certificates had been issued at that time would you not have known it, or is there any reason why this should be withheld from you as a partner?

A. No sir, I don't know of any reason.

Q. Did you know of every certificate issued out of that bank?

A. No, sir.

Q. You say it was on the 22d of May he returned from Omaha?

A. Yes, sir.

Q. The 22d of May would be Saturday. Mr. Brock said he returned on Thursday, may you not be mistaken about the day of the month?

A. I am not positive. I don't remember the day of the week.

Q. The 22d of May would be Saturday, but Brock says he returned on the Thursday after he left, and I simply call your attention to that as a matter of date?

A. I could not state as to the day of the week.

Q. Now, just think for a moment how it was?

A. So far as the day of the week is concerned I could not tell,

Q. Might you be mistaken about the day of the month he came back?

A. I could not swear positively.

Q. Then, if it should turn out to be true he got back on Thursday you are sure you counted the money the same afternoon?

A. Yes.

Mr. ESTABROOK. Don't you know that money was placed in the carpet-sack, and simply set in the vault for a day or two or three?

A. I know it was not.

Q. Do you know whether any entry whatever was made immediately upon the counting of it?

A. No, sir; I do not.

Q. Were any of these accounts hid from you?

A. I don't think they were.

Q. Were they not there when you and Sweet looked over the books, and they escaped your notice?

A. They might have been.

Q. Don't you think they were?

Mr. REDICK. I object. Put it in writing.

Mr. ESTABROOK. Could it have been possible those were hid from you, or that they were not there when Sweet and you looked over the book?

A. Yes. Such a thing was possible.

Q. Is it probable?

A. I would hardly think so.

Senator THOMAS. When were you elected Treasurer of the Board of Regents of the University?

A. I have been elected twice. Could not answer that question.

Senator THOMAS. When was the last time?

A. The 22d of December last past.

Senator THOMAS. When was it you and Sweet examined the stubs of the certificates of deposit to find out whether there was anything about the five per cent. fund in that book?

A. About the time of the Investigating Committee; a little over a year ago.

Senator THOMAS. Were there any blank stubs of certificates for the month of May, 1869, in that book at that time?

A. I could not tell.

Senator THOMAS. Did your banking house permit blank stubs of certi-

ficates of deposits to be left in your book?

A. It was not a usual thing.

Senator THOMAS. Did you ever permit it?

A. I don't think it was ever done previous to that time. If it was done this—

Senator KENNEDY. Did you ever use State money with which to buy State warrants at a discount?

A. I did.

Senator SHELDON. You say you bought warrants. Did you share in the profits gained in buying State warrants at a discount?

A. Most assuredly I did.

Mr. REDICK. Did the banking-house of Sweet & Brock share the profits?

A. Yes.

The PRESIDENT. At the time Brock brought the five per cent. fund from Omaha, was the Treasurer keeping the State funds separate from the banking funds of James Sweet, Brock & Co.

A. He was not.

Mr. REDICK. Did the firm of Sweet & Brock refuse to pay State warrants at par when they had funds standing in their name belonging to the State?

A. I think they did.

Senator HASCALL. There might be funds in the Treasury, but not applicable to the warrants presented; if they were applicable did they refuse to pay them?

A. I think they did.

Mr. ESTABROOK. We offer those books in evidence.

Mr. REDICK. I object to it.

Senator KENNEDY. Did you pay Governor Butler money or any other valuable consideration to have him use his influence for you as Treasurer of the Board of Regents.

A. I did not ever.

Mr. ESTABROOK. Mr. President, we would like to offer these books of the State Treasurer in evidence.

Mr. REDICK. We object, on this ground, and this alone. In the first place, Mr. Brock was called upon the stand to testify with regard to these

certificates and the deposit, with regard to this five per cent. fund. He was asked if he did not state to McConnell at a certain time, that if Sweet would stay in Nebraska City, he would fix the book, so that no Legislature would be the wiser for examining them. He said he did not say that. Now we bring one McConnell, merely to show that Brock *did* make that statement. We wished to prove something that was on the books, and the books were the best evidence. Now they ask that the entries on the books of James Sweet and Brock shall be admitted as evidence. I say it would be wrong to admit these books, because we know nothing about these entries. It will be borne in mind by those who have watched this thing the closest, that Brock made these entries without the knowledge of Governor Butler; made out these certificates himself, no doubt, without Butler dreaming anything about it. If he made out these certificates on the 22d or 23d of May, are we bound by it? There are three days intervening that nobody but God knows what became of that money; three days from the time the money was brought down from Omaha. Before you can ask that these books be admitted as evidence, you must connect Governor Butler with the authority for making these entries. If you can show that Governor Butler ordered that money placed to his credit we could not object to the admission of these books.

Senator THOMAS. What is it that is offered in evidence?

The PRESIDENT. The Managers offer the books of James Sweet and Brock.

Mr. ESTABROOK. Only so far as the testimony in this case goes. Now, Senators, let

us see what course this case has taken. This McConnell has been introduced upon this stand, and he tells us when this fund was brought into the bank, and goes on to state what was done with it. He says that these certificates have been ante-dated. He goes on to state that there were three different individuals in whose names entries were made when school funds were placed in the treasury. He stated that the books would show it—the books of Sweet & Brock; and when he is shown the books he is constrained to admit that everything about those books are all straight and right.

Mr. REDICK. At the instance of Governor Butler I will let the books go in. I now offer in evidence a copy of the joint resolution of the House and Senate, which was the result of that investigating committee.

Mr. ESTABROOK. I object to that; it was argued in the exceptions and passed upon then—

Mr. REDICK. No it was not.

Mr. ESTABROOK. Yes it was; it was the "whitewashing resolution" referred to.

Mr. MARQUETTE. The exceptions were argued without evidence, and the ruling of the Court upon those exceptions does not affect the admission of this evidence.

(The proposition reduced to writing.)

The PRESIDENT. Gentlemen, the counsel for the respondent offers in evidence the joint resolution relating to the Commissioners of public buildings approved March 4th, 1870; to which the counsel for the respondent objects. The question is, shall the objection be sustained. As many of you as are of the opinion that the objection should be sustained will, as your names are called, answer "Aye," and as many of you as are of the opinion

that the objection be not sustained, will answer "Nay."

The vote was taken with the following result:

Ayes—Messrs. Hascall, Sheldon—2.  
Nays—Messrs. Brown, Cropsey, Gerrard, Hawke, Hilton, Metz, Kennedy, Thomas, Tucker, Tennant, Mr. President—11.

The PRESIDENT. Gentlemen, two members having voted in the affirmative, and eleven in the negative, the objection is overruled, and the resolution will be received in evidence.

Mr. REDICK. I will read the resolution.

JOINT RESOLUTION IN RELATION TO  
THE COMMISSIONERS OF PUBLIC  
BUILDINGS.

*Resolved by the Senate and House of Representatives of the State of Nebraska,* That, having heard the report of the committee appointed to investigate the official conduct of the Commissioners of Public Buildings, it is the judgment of this Legislature, that said Commissioners acted in good faith in the discharge of the duties imposed upon them, and that in exceeding the appropriation in the amount of lands and lots sold, and in increasing the size and cost of the public buildings now in course of erection at Lincoln, they have been generally actuated by an honest purpose to subserve the best interests of the State, and we therefore endorse their action, and exonerate them from all censure, both in their capacity as such commissioners, and as individual citizens.

(Signed,) WM. McLENNAN,  
Speaker of the House of  
Representatives.

(Signed,) EDWARD B. TAYLOR,  
President of the Senate.  
Approved March 4, 1870.

(Signed,) DAVID BUTLER,  
Governor of the State  
of Nebraska.

Mr. REDICK. I offer in evidence the following letter written by Mr. Hall to Governor Butler, dated March 25th, 1869, touching the leasing of saline lands:

OMAHA, NEBRASKA,  
March 25, 1869.

To His Excellency, David Butler,  
Governor of Nebraska:

HONORABLE SIR:—We have the honor to communicate to you, and invite your attention once more to the leasing of the saline lands. When we last saw you, you had some communication to make with other parties before giving us any decided answer. We had decided to be at Lincoln, June 3d, but it has occurred to us that you will be so busy at that time, that perhaps we had better defer our visit a few days. About the 10th we expect our uncle, Prince S. Crowell, who is a director of the Cedar Rapids and Missouri Railroad (and will be on the excursion train,) and who was the inventor and owner of the first salt grinding mill in this country—the Boston Rock Salt Company—and who, on learning our intention to manufacture salt at Lincoln, has telegraphed us from Boston that he is ready to take an interest with us, and furnish means to work with; and no doubt, would visit Lincoln with us on the 10th or thereabouts, should we wait so long. But if you have already arranged outside matters, and will be at leisure to attend to us, and will do us the honor to communicate the same to us, we will be there promptly on the 2d or 3d of June, which we would prefer, as we would like to purchase a few lots, and are anxious to secure the lease. We remain

Yours, most respectfully,  
HALL & BROTHER.

Mr. J. N. CASSELL sworn and examined:

By Mr. REDICK:

Q. Were you familiar with the value of what is known as the Tichenor property in this city, in July last?

A. I think I was pretty familiar. I do not recollect whether it was completed at that time.

Q. Will you tell the honorable Senate, what, in your opinion, that property was worth on the 1st of July, 1870, as it stood with the property that fell afterwards?

A. It was worth in the neighborhood of \$30,000.

Q. What do you consider it worth to-day?

A. About that.

CROSS-EXAMINED.

Mr. ESTABROOK. Do you think it would sell for one-half of that?

A. Yes. I think I could find a purchaser at one-half that.

Mr. A. J. CROSEY sworn:

Mr. REDICK. Will you state what, in your opinion, the Tichenor property was worth in July last, including the stone building that fell down?

A. I would hardly know.

Q. Give us your best opinion?

A. I have heard it spoken of as \$20,000 to \$25,000. I think I would be a poor judge of that kind of property. I was told it was worth that.

Mr. R. P. BEECHER sworn:

Mr. REDICK. Was you an insurance agent along about the last of July, 1870?

A. In "The Underwriters Company."

Q. State whether the Tichenor House was insured in that company for the benefit of the State?

A. Mr. Tichenor had two policies, one of \$5,000, the other of \$8,000, both assigned to the State.

Q. State whether it stands in there to-day: in what company and what amount?

A. \$8,000 in the Underwriters Agency.

Q. Is that a good company?

A. It represents three or four millions. It is considered one of the best?

Q. Was not there one or two policies cancelled?

A. One policy was cancelled by order of the company. It was never renewed. The company wrote to me that the property had been overestimated. The policy which was cancelled was on the Lorillard of New York. I don't know why it was not renewed.

Q. Don't you know that the reason was because Governor Butler would not renew the policy?

A. I know nothing about it. Tichenor came to me after the policy was

cancelled and asked me if he could not transfer it to another company. He said Mr. Brock was ready to insure it right away. I told him he had better do it. The policy now in force is for \$8,000, and expires the 27th of next June. I think Mr. Brock had the property insured for \$7,500, besides the \$13,000 insured with me.

Q. What became of the premium money on the policy cancelled?

A. I returned the unearned premium to Tichenor. Governor Butler objected to this; he first denied my right to cancel the policy. Mr. Brock and I convinced him I had the right to do this. He scolded some because the money was not paid over to the State.

CROSS-EXAMINED.

Mr. ESTABROOK. Do you not hold some office?

A. I am a Notary Public. My office is in Governor Butler's office at present. I have an office, also, down in town, at the corner of Market Square and P street.

THOMAS P. KENNARD RE-CALLED.

Mr. REDICK. I want to ask you how far the superstructure of the Asylum had advanced by the 14th or 15th of December, 1869, and how much material had been bought?

A. I have not got any positive date by which to fix it precisely, but Mr. Ward had had a contract prior to that, as he got the contract for the basement. At the time of the Investigating Committee they appointed one or two of their number to go and estimate the amount of material on hand, and the amount of work done up to that time. I think it was about \$45,000 that they reported in material on hand and work performed.

Mr. ESTABROOK. Was there more than one contract entered into by Ward?

A. Yes sir, there were two.

Q. What did each cover?

A. The first was the basement, and the second was for the superstructure.

Q. What was the contract for the basement?



A. I can not tell you, it is in our report.

Q. What process did Mr. Ward have to go through with to get his pay?

A. He brought in his claims to the whole board, and they were passed upon.

Q. Were not the claims first allowed and passed upon by yourself and the Governor?

A. I don't think there was any special rule.

Q. Were they passed upon by all of you before they were allowed?

A. Yes sir, I suppose they were. He brought in his accounts, so much for estimates of work, and so much for material. When they were passed upon they were simply marked "approved." They were attached to a printed form and we approved them. I do not recollect the form. They are all on file in the Auditor's office.

Q. Were any of those estimates paid until the time Mr. Hunt went out there to examine?

A. I think not.

Q. Was the superstructure at that time let?

A. Yes, sir.

Q. When were they let—the different contracts?

A. If I had the Commissioner's last report I could tell you. (A copy of report furnished to the witness.)

Witness KENNARD. The different contracts were let, I think, at the times stated here.

Q. What was the date of the contract for the basement?

A. I judge from this report that it was June 3d.

Q. Now what was the date of the contract for the superstructure?

A. It appears to be the 18th of September.

Q. What was the amount estimated and paid between those two dates, can you tell?

A. I can not.

Q. Was there anything paid?

A. There was.

Q. Had the labor commenced on the superstructure?

A. Yes, sir, very largely; and at that time there was a large amount of

lumber on hand that had been estimated, and a large amount of rock.

Q. Was you present at the meeting of the "white-washing" committee to investigate that matter?

A. Well, I was before that other investigating committee, and gave my testimony there.

Q. Will you please look over that report, and see what their conclusions are?

A. I see they charge there that the Commissioners had not done it according to law.

Q. Will you explain wherein that was true at the time of that investigation. The report of the committee says:

"The Commissioners have been somewhat careless, and have paid estimates on the erection of the Asylum, when sufficient work and material were not furnished for the Asylum to justify the estimate at the time made. The contractor of the Asylum has also contracts for building, in which the Governor and Secretary of State are interested, and such contractor has obtained funds on estimates for the Asylum with the view of using the funds immediately in furtherance of the erection of the houses of the Governor and Secretary, and in like manner has also obtained funds from said parties on estimates for their houses which applied to the work and material of the Asylum. The testimony also shows that there has been about \$4,000 drawn in excess of the work done and material furnished on the contract for the erection of the Asylum; but in the opinion of Mr. Hunt, one of your Committee, who is an experienced builder and contractor, who examined said work done, and material furnished, the State can suffer in no material interest so far as the contract for building the Insane Asylum is concerned."

State whether that is true—

Mr. REDICK. I object.

Mr. ESTABROOK. State if that be true, and if so, explain it.

The PRESIDENT. The counsel will reduce his question to writing.

The request is complied with.

The PRESIDENT read the clause again.

Mr. ESTABROOK. I ask witness to state whether the facts embodied there be true.

The PRESIDENT. The counsel has submitted the question in writing. I will read it again.

Mr. REDICK. My objection is simply this—not because I would give a cent for the opinion of the witness, but for the time it will take up. I only called Mr. Kennard to show that a large amount of material for the superstructure of the Asylum was on hand at the time the \$47,000 was paid. If we don't stand by some rule, we never can wind up this case. I will wind up in an hour if he will let me. The book containing this trial is going to be cited by future generations. I am interested in the reputation of the book and the shorthand writers, but I am not interested in the reputation of the counsel on the other side. He calls out irregular testimony.

The PRESIDENT. You have heard the question. As many as are of opinion the objection be sustained will, as their names are called, answer "Aye;" as many as are of the contrary opinion will answer "Nay."

The following was the vote:

Yeas—Messrs. Thomas, Tucker—2.

Nays—Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Tennant, Mr. President—11.

The PRESIDENT. Two having voted in the affirmative and ten in the negative, the objection is overruled.

WITNESS. You asked me to state whether the statements are true. They state, in the first place, we were careless in making our report, and in paying estimates. I don't know where they get their testimony from. I don't know, at this time, just what my testimony was on that occasion. I do

not recollect at this time just what my testimony was, nor am I able to state just in detail what all the facts were.

Mr. ESTABROOK. I read from the report of the Investigating Committee: "The contractor of the Asylum has also contracts for building, in which the Governor and Secretary of State are interested, and such contractor has obtained funds on estimates for the Asylum with the view of using the funds immediately in furtherance of the erection of the houses of the Governor and Secretary, and in like manner has also obtained funds from said parties on estimates for their houses which applied to the work and material of the Asylum. The testimony also shows that there has been about \$4,000 drawn in excess of the work done and material furnished on the contract for the erection of the Asylum." Do you know anything about this?

A. I don't recollect and cannot state from what source they obtained that information. I recollect this to be the fact. In one instance, I was going to Omaha, and Mr. Ward sent a bill by me to purchase lumber. I bought at Council Bluffs six or seven thousand dollars worth of lumber, which was shipped down here and paid for. I think there was a portion of that lumber went into my house, and I may have stated that before the committee. Part of it might have gone into the Governor's house. He was the contractor upon all our buildings, and charged up to us, and I paid him when I got the money. It might be sometimes I was behind, and sometimes I might be ahead of Mr. Ward. What he did with the money received on estimates for building the Asylum, I don't know.

Q. Did he furnish material for the Governor's house?

A. I don't know.

Q. Do you know whether the Governor paid him anything between the month of June and the time when winter set in?

A. I recollect at one time that he did.

Q. Have you any means of knowing that these estimates made, audited by the Auditor, and paid by the Treasurer, were the only means Mr.

Ward had for carrying on the building, as well as the public buildings?

A. I don't know. I have no means of knowing whether this was so in the case of the Governor. I don't know how Ward used his money.

Q. It was stated in that report that there was an overpayment on estimates; how do you explain that?

A. I only know from the examination made by Mr. Hunt, and the estimates made there, as to the amount of work done and material on hand. I don't know what was done with the money thus overdrawn. It may have been overdrawn at that time.

Q. Did you know that that was so overdrawn?

A. Well, I don't know but what he might have overdrawn at that time.

Q. If it were so, what was the reason for giving those over estimates?

A. Mr. Ward claimed that his work and material was in advance of the estimates. Mr. Hunt's opinion was that it was not.

Q. Which was right?

A. I don't know.

Q. How often did you, as Commissioner, go upon the ground?

A. Every two weeks we took a general supervision, so that we think we kept the estimates within the limits of the work and material.

JOHN CADMAN, sworn:

Mr. REDICK. Are you familiar with the value of property in Lincoln?

A. Well, not as much so as a great many that live here.

Q. What, in your opinion, was the value of the Tichenor House last fall?

A. I have not any knowledge sufficient to answer that. I never have been through the house.

Mr. REDICK. Mr. President and gentlemen, it is now after 5 o'clock. We have two more witnesses which are not in the house. It will only take about twenty minutes to get through with them, if they don't cross-examine too long; but if the Senate wish to adjourn now we will finish up in the morning.

Senator HASCALL. Mr. President, I move that the Senate, sitting as a

Court of Impeachment, do now adjourn until 9 A. M. to-morrow.

Senate adjourned.

#### Ninth Day.

March 23.

The Senate, sitting as a Court of Impeachment, was called to order at 9 o'clock, A. M. Roll called, all the Senators answering to their names.

Mr. REDICK. I have to offer in evidence the report of the Treasurer to the present session of the Legislature. I will say to the counsel for the prosecution, if they will consent to the introduction of that, when Mr. Hall, who has charge of the report, comes, we will rest our case here.

Mr. ESTABROOK. That is satisfactory.

Mr. REDICK. Then we will introduce that report when it comes, and there is our case, gentlemen, submitted.

Manager PORTER. We would like to be allowed to examine the witness, Mr. Davis, upon matters relating to the specifications in the ninth article. It will be remembered that this is one of our witnesses that had not arrived at the time we rested our case. Mr. Davis has since arrived.

Mr. REDICK. We do not object to the examination of this witness, if it does not take too long.

JESSE T. DAVIS, sworn:

Manager PORTER. State your occupation and place of residence.

A. I am a lawyer; reside in Blair, Washington county, Nebraska.

Q. State what connection you have had, if any, with the Nebraska Air Line Railroad?

A. I was Secretary of it at its organization. The articles of organization were drawn about the 7th day of June, 1867.

Q. State who were the directors of that company?

Mr. REDICK. I object, because this information is already in writing.

Manager PORTER. Are you able to state how the organization of the company was perfected?

Mr. REDICK. Was the organization, Mr. Davis, in writing?

A. It was.

Mr. REDICK. Then I object, Mr. Porter, unless you produce the writing. However, I will not insist upon my objection. The witness is at liberty to answer the question.

WITNESS. As I have stated, the articles of organization were prepared and filed with the Secretary of State. There was a meeting of the organization the next day, and we proceeded to the election of officers. It was organized under the general incorporation act.

Q. Did the officers at that time adopt by-laws and a regular Constitution?

A. They did that day or after the articles of incorporation were filed with the Secretary of State. These articles and the by-laws made provision for the election of officers. The annual election, I think, took place three months after the adoption of the articles of incorporation and by-laws. The next regular meeting held by the company, I think, was about one and a half or two years after that.

Q. State whether the annual meeting was held at the time the articles of incorporation and by-laws provided?

A. It was not.

Q. How long after that time was it held?

A. I think the articles of incorporation provided that the meeting should be held in September 1867, and there was no meeting until 1868. I think over a year after the time it should have been held.

Q. What was done at that meeting?

A. There was a proposition read from the Sioux City Pacific Railroad, to take the contract and con-

struct the road as required by our articles of incorporation.

Q. When was this meeting?

A. It was sometime in the fall of 1868, I don't remember what date.

Q. Who was present?

A. General Bowen, President; Mr. Kennard, D. C. Slader, John T. and Henry P. Beebe and myself.

Q. Will you state whether those persons were elected as officers of the road?

A. They were elected at Omaha city, at our first meeting in June 1867.

Q. When were the books opened for the purpose of taking stock in that company?

A. I don't remember the date, but it was a short time after this meeting in 1868.

Q. Will you state, if you are able, where the subscription books are at the present time?

A. I cannot say where they are. They were taken from my office the day the stock was taken, and taken to Cedar Rapids, Iowa, where I think they are now.

Q. Can you state the amounts taken at the time?

A. I can not state the amount each took, or the amount taken, but it was the full amount required under the law.

Q. State whether any portion was paid in at that time?

A. No money paid at that time. There was talk by some of the parties that they would put their—

Mr. REDICK. Now, Mr. Porter, I shall object to the whole of this, for it is not proper for a witness to state what was said around there.

Manager PORTER. Will you state if you know anything about the consolidation of the Northern Nebraska Air Line with the Sioux City Pacific Company?

A. There was an attempt at a consolidation. There was one which took place about three or four months after the date of taking stock of the company.

Q. Will you state to the Senate what was done at the time the consolidation took place.

A. Mr. Cook was then Attorney of the Sioux City Pacific Railroad, and came to my office in DeSoto for the purpose of consolidating the two companies.

Q. What company did he at that time represent?

A. The Sioux City Pacific, and certain stock in the Northern Nebraska Air Line.

Mr. MARQUETTE. I think it hardly proper to go through every private conversation that took place between the two attorneys of this road. I believe the witness has said the roads were consolidated. If that is so, we admit it; but to go back and state everything said, is not necessary. If there is any point, it would be the fact that they were consolidating. That the witness already states. If the consolidation was not according to law, that is to be put in writing. It is not evidence in this case.

Manager PORTER. Will you state who was present at the time it was claimed this consolidation took place?

A. Judge Cook, the attorney of the Sioux City & Pacific, and representing stock in the Nebraska Air Line, and myself.

Q. Anybody else at that meeting?

A. No others in person.

Q. Will you state at what time this meeting was held?

A. I did state. Some three or four months after taking stock of the Northern Nebraska.

Q. What month or year was it?

A. I think 1869.

Q. Up to that time, had the Northern Nebraska Air Line Company ever constructed any railroad in Nebraska?

A. Not to my knowledge.

Q. If they had would you have known it?

A. I think I would.

Q. Up to that time had they ever filed any statement in any of the State offices, as to their condition on the 1st of January, as provided under the Incorporation Laws?

A. There never was any statement of the condition of the company filed with my signature as Secretary.

Q. Had there ever been any monies paid in to that company for stock?

A. Not to my knowledge.

Q. In what condition was the Sioux City & Pacific Company in Nebraska at that time?

A. There was a good part of the grading done. Most of it.

Q. How long after the consolidation before that road was completed?

A. The Sioux City and Pacific?

Q. Yes.

A. I think it was completed during the next winter to Fremont.

Manager PORTER. If there is no objection, Mr. President, I would like the witness to draw a little diagram of the Sioux City and Pacific Railroad.

[Witness drew a rough sketch.]

Manager PORTER. How soon after the consolidation, before the Sioux City and Pacific in Nebraska was completed?

A. About eight or nine months. I think.

Q. Did the Sioux City and Pacific Railroad in Nebraska connect De Soto with Fremont?

A. Not as the Sioux City and Pacific Railroad. There was three miles of road built between Blair and De Soto to make that connection.

Q. Were you acquainted with the construction of this part of the road; if so state the character of it?

A. It was constructed of very small ties on a steep grade, and a good deal of old iron was used.

Q. Did you understand what subsidy, if any, the Sioux City and Pacific Railroad received from the General Government?

A. I know nothing except what I got from the Act of Congress and—

Q. State whether you know anything about the assignment of twenty-five sections of land to the Sioux City and Pacific Railroad?

A. I don't know of my own knowledge that it has been assigned. I came here twice as the agent of John I. Blair for the purpose of securing this assignment. General Bowen and Isaac Cook came here with me the first time. We conversed with Secretary Kennard. The second time General Bowen and John I. Blair came

with me. We conversed with all the Commissioners. They were not all together.

Q. State whether any arrangement was made at that time for the purpose of giving the Sioux City and Pacific Railroad the patent to these lands?

A. Not at that time. An objection was raised by the Governor, and also by Mr. Gillespie, the Auditor. The objections of the Governor were, he thought the lands should not be given out of the best lands of the State, and they should not be selected all in one body. The selection had already been made by General Bowen and myself. Gillespie's objections were about the same. I was acquainted with the location of most of these lands. I don't know whether this selection was confirmed.

Q. Were you ever informed by the Company that this selection had been confirmed?

Mr. REDICK. I object to his telling what he has been informed.

Manager PORTER. How long after this before you understood that the selections had been confirmed.

A. It must have been about three months after.

#### CROSS-EXAMINED.

By Mr. REDICK:

Question.—Mr. Davis, did not you come down here as the attorney for the road?

Answer.—Yes, sir.

Q. Was not the Attorney-General of the State consulted at some time?

A. I believe so; I think there was a proposition made by one or two of the Commissioners to send for him. I was present as the attorney for the road. I understood the main objection to be that the land was being taken from the best lands in the State.

#### RE-EXAMINED.

By Manager PORTER:

Question.—Did the selections represent sections, half sections, or quarter sections?

Answer.—I think it represented not less than half section.

Q. Do you know what these lands are worth at the present time?

Mr. REDICK. I object.

Manager PORTER. I withdraw the question.

Manager PORTER. We now offer the abstract of the title to the Pawnee county lands in evidence.

THOMAS F. HALL recalled.

By Manager PORTER:

Question.—[Letter shown to the witness.] Mr. Hall, it was stated yesterday that that was your signature; will you explain to the Senate on what occasion you wrote that letter?

Answer.—Well, I would state that this relates to the same matter that I testified to before. This letter applies to that first piece of land we applied for. I wrote this to Governor Butler and he answered me.

[Another letter shown the witness.]

Q. What letter is that?

A. That is the letter from Governor Butler in reply to mine.

Q. Please read it to the Senate.

[Witness reads the letter, as follows:]

STATE OF NEBRASKA,  
EXECUTIVE DEPARTMENT. }  
LINCOLN, May 29, 1869. }

HALL & BROTHER, Omaha, Nebraska:

DEAR SIRS.—Yours of the 25th inst., I have received, and have to say that the parties from St. Joseph have visited me, and insist upon the priority of their claim over yours, and as I have no right to exercise any preferences, even if I were so inclined, I feel compelled to yield to their claim. There are other lands, however, equally desirable, and if you will take them I will reserve them until you come. I shall, as you have in your letter anticipated, be very busy on the 3d prox., and for some days thereafter. If it will answer your purpose equally well, and your uncle's letter, you may defer your visit to the 10th prox. But this is a matter which I will leave entirely to you. If you desire to purchase some lots or lands, and cannot afford to make but one visit, and that a short one, I think we can get time to fix up the matter if you come on the 3d prox. I have the honor to be,

Very truly Yours,

(Signed,) DAVID BUTLER.

Now, are the lands referred to in the letter which you wrote to Governor

Butler, the same lands referred to in your first visit?

A. Yes, sir.

Q. Did you afterwards visit Lincoln about obtaining a salt lease?

A. Yes, sir.

Q. When?

A. In June.

Manager PORTER. Mr. President, we desire to offer this abstract in evidence

Mr. REDICK. What is it?

Manager PORTER. An abstract made out by the Clerk of Pawnee County, in reference to the Pawnee lands referred to in the mortgages.

(Examined by the counsel for the respondent.)

Mr. MARQUETTE. I suppose the object of introducing this is to get in some testimony that was ruled out yesterday morning. I guess at that; but I think I guess pretty straight. I see here at the end of each abstract, "the above tract was assessed, so and so." In other respects I believe the abstract is just the same as the one introduced by us. I commend the ingenuity of the gentlemen, but I shall certainly object to the admission of the testimony.

Mr. REDICK. I would like to know who the father of that dodge is. I know my friend Porter would not do that. (Laughter.) Now, Mr. President and Senators, you see here is a similar abstract to our own, which we have offered. These gentlemen say it is all right; but, as Mr. Marquette says, there is the assessment at the end of each quarter. They come pretty nigh catching me. And now, if my friend Doom will explain himself on this, I would like him to do so, for I am for him for Governor yet. (Laughter.)

Manager DOOM. I will state briefly what the object is. It was not sought to be concealed. We desire to produce

this as rebutting testimony. They introduced testimony to prove that men thought something; we propose to introduce something tangible, authentic; something showing the assessed value. I would ask that G. W. Collins be put upon the stand to prove this.

Mr. MARQUETTE. We do not object—

The PRESIDENT. The Honorable Manager will reduce his proposition to writing.

Mr. ESTABROOK. I will state where I know the difference is, between the question now and yesterday morning. There is considerable doubt in my mind whether this could be proved by parole testimony, with a witness without record in his hand. But here we have something substantial; that which is taken direct from the record of the County, by the County Clerk, in whose custody the records are, and are presented here under seal. I don't think anything in regard to those mortgages; but if it is worth while to talk at all about the value of the land embraced in the fancy mortgages, those amateur conveyances, the Governor has succeeded in stuffing into the public mind; if it is worth \$17,000, it is worth while to produce testimony from authentic sources. It has the great seal, and all the due formality and red tape.

Manager PORTER. It appears to me in introducing rebutting testimony anything it is proper for the Senate to consider for the purpose of rebutting the evidence given by the respondent, should be received. This abstract differs from the other in that it is the facts given in the other abstracts, and also shows the assessed value. But there is another fact in this not in the other, and I believe for

that reason alone, it should be introduced; that anything which gives the Senate an opportunity to judge carefully and squarely, should be received; and this abstract gives the date of the deed and the consideration; and that is entirely left out in the others; and I think that a good basis upon which to figure the real value of that land. And this consideration shows what the parties themselves believed the land to be worth at that time; and for that, if no other reason, it ought to be before the Senate. There is no injustice in it; but it is simply for the purpose of giving the Senators the facts in the case, upon which they can judge. There is the valuation in addition to the assessment of what the owner of the land and the seller previously agreed it was worth.

Mr. MARQUETTE. I think that would be an additional reason, if that is its object; because in no court of justice will they allow you to go back three or four years to show what land sold for. They will confine you to a certain time, and the proof must be what its cash value is at that time. We were confined to that, and they ought to be. Assessment is never proof of value. I have never known a single instance where it was so recognized. I attempted, at the last term of court in our county, where the party himself had made the assessment to introduce it as an admission of the party, and the court ruled it out. I said yesterday, and I say now, that if the assessor is to be a witness, we want him on the stand, where we can face him and cross-examine him. And hence we desire to rule this out. Now, they say this is a record. All there is here is no record at all. It is simply a memorandum of the clerk on themselves. If it could be introduced as evidence it must be the assessment

roll, certified to be the correct one; but it cannot be in this case, where the Constitution says a party must be confronted by his witnesses.

The PRESIDENT. Gentlemen, the Managers have offered a certified abstract of the land covered by David Butler's mortgages in Pawnee County, showing the exact value of the land. Unless some Senator asks for a vote, the Chair will rule that the objection is well taken.

Senator SHELDON. I desire a vote.

The PRESIDENT. The counsel for the respondent object to the abstract being offered in evidence. The question submitted to you is: Shall the objection be sustained? As many as are of opinion it be sustained will, as their names are called, answer "Aye"; those of the contrary opinion will answer "Nay." The Clerk will call the roll.

The following is the vote:

Yeas—Brown, Hilton, Kennedy, Tucker, Tennant, Mr. President—6.

Nays—Cropsey, Gerrard, Hawke, Hascall, Metz, Sheldon, Thomas—7.

Senator TUCKER, when his name was called said—I vote to sustain the objection because I do not consider the valuation upon land by an assessor as any criterion by which you can arrive at a true value.

The PRESIDENT. Six having voted in the affirmative, and seven in the negative, the objection is overruled.

H. C. LETT, sworn.

Manager PORTER. Where do you reside, and what is your occupation?

A. I reside in Brownville, and my occupation might be considered varied, somewhat. I have been engaged in buying land in the Nemaha District.

Q. Have you any knowledge of the land in Pawnee County?



A. I don't know that I have a very clear idea. I have lands for sale in that county.

Q. For how long a time have you had lands for sale in that county?

A. For three or four years.

Q. Have you had lands upon your book in the vicinity of Pawnee City, within a limit of twelve miles?

A. Yes, sir, I think so.

Q. Have you any within a limit of nine miles?

A. I am inclined to think I have not.

Q. What kind of lands have you had there?

A. Unimproved lands.

Q. What do you understand these lands to be worth?

A. I have been asking \$5 per acre.

Q. For how long a time?

A. Ever since I have had them on my books. I have not been able to sell them at that price. I have not sold lands in Pawnee County during the last year.

Q. State whether you have had opportunities of selling lands?

A. Yes, I have sold a great deal of land within the last five or six years, in Southern Nebraska.

Q. Have not you been engaged in entering lands in the Nemaha District during the last few years?

A. Yes, sir.

Q. What, in your opinion, could you sell lands for per acre, in Pawnee county, at a forced sale, after being advertised thirty days?

A. I am not able to answer that question any further than I have made a statement. I have not been able to sell the land I hold there at that price. I never took any one out there. I have given parties plats of these lands, but they have never returned.

Q. Did you regard lands as valuable, the distance from the river, as lands nearer the river?

A. I have sold lands nearer the river during the last year. I have sold a great many pieces of land in Nemaha county within the last year.

Q. At what figures?

A. At five or six dollars per acre. Lands sold at that price within the vicinity of settlements.

Q. If you were loaning money, how much would you regard these lands in Pawnee county, within a limit of

nine miles of Pawnee city—what would you regard their value as a basis for loan?

Mr. REDICK. That's objectionable, but we will let you ask it.

A. I really don't know how I could answer that question, because I would be inclined to estimate land very low in loaning money. I don't think I would be inclined to put land anywhere at more than half its value.

Mr. ESTABROOK. Just answer in regard to Pawnee county.

A. The lands that I hold at five dollars an acre, I would not loan money on at \$2.50.

#### CROSS-EXAMINED.

Mr. REDICK. Did you ever see your lands in Pawnee county?

A. No, sir.

Q. Where are they?

A. I think they are near the eastern line of town 1, range 9 east.

Q. State whether Pawnee county is not one of the best counties in that portion of the State?

A. All the lands, as a general thing, in that county are considered the best of lands.

Senator TUCKER. Do you know whether the parties whom you gave the numbers of your land to, ever saw the land?

A. No, sir; I could not tell that. I simply gave them the numbers, and they never came back.

JAMES SWEET, re-called.

Mr. ESTABROOK. Mr. Church testified that he was present at your banking house, and had an interview with you, and inquired whether you had received the five per cent. fund, and you turned to your books and found an entry there, and told him that it was. State what the facts were in regard to that matter?

Mr. REDICK. Just it. Now put that in writing and I will object to it. I can save time by stating the object of my objection. It is this: the rule is, when a witness is called upon a witness stand to testify, you have a right to lay a foundation to impeach him. We laid that foundation when this witness was on the stand and then brought witnesses on the stand to con-

tradict him, but the witness cannot be brought back to contradict our witness.

**Manager DOOM.** I don't wonder at the tenderness of the gentleman, after what occurred here yesterday. We think it is due to the people that this witness be allowed to explain his testimony.

**Mr. MARQUETTE.** Mr. President, if so, then our witnesses will have a right to come in and explain their testimony, and where are you going to stop? The rule is this: that they have a right to rebut new matter introduced by the respondent, and they have to be confined to that.

**Mr. ESTABROOK.** Senators, we are learning some very strange propositions of law here. We bring this man here for the purpose of rebutting what was stated by one of their witnesses. There is nothing in the nature of an impeachment in it. It is his privilege to come upon the stand and explain his testimony. Suppose he comes up here and says he had no interview, or if he had one, where, and under what circumstances?

**Mr. REDICK.** He did state that.

**Mr. ESTABROOK.** No, sir, he did not. There is nothing more common, where a man is impeached, than this: that an individual be brought upon the stand to state what were his opportunities. We ask here that Mr. Sweet shall explain what were the facts. Let me suggest it is not here whether we shall remove the amount against David Butler, or whether one man or the other has lied, but as to the fact whether David Butler did deposit in that Treasury a certain sum of money. What he told does not bind us, but it pertains to the very subject laying at the foundation of this thing; whether, indeed, the mon-

ey was deposited as they contend. And for the purpose, we ask the Treasurer to point out the very figures upon which that remark was made, casually, without having his attention specially called, and to make a statement all about that subject.

**The PRESIDENT.** Gentlemen, the question asked by the counsel for the Managers is: "Mr. Church stated in his interview with you, he asked you about the five per cent. funds, when you turned to your book and stated what was on entry you found there, and there stated that said fund had been deposited. State what you know of such interview." The question is objected to by the counsel for the respondent. The question is: shall the objection be sustained? As many as are of opinion the objection be sustained will, as their names are called, answer "aye;" those of the contrary opinion will answer "no." The clerk will call the roll.

The following is the vote:

**Ayes.**—Gerrard and Tucker—2.

**Nays.**—Brown, Cropsey, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tennant, Mr. President—11.

**The PRESIDENT.** Gentlemen, two having voted in the affirmative and eleven in the negative, the objection is overruled.

**Mr. ESTABROOK** repeated his question to the witness.

**A.** My recollection is, the first interview I had with Mr. Church was on the street, and I was going to, or returning from dinner. He asked me relative to the \$17,000. I stated to him Mr. Brock had kept the books, and I did not know whether such sum had been deposited or not, but I would look. I cannot state whether Mr. Church went with me to the office, but it seems to me now I saw him afterwards, and told him I had found an entry of \$17,000, in round numbers, and I supposed it was that money; but

I have no recollection that he was in the office when I looked at the books. I don't recollect that he was. My impression is, I saw him somewhere else.

Q. In what book would you look to ascertain the fact?

A. It must have been in that book.

Q. If you can turn to those figures, do it?

A. In explanation I will say, at that time I had no knowledge that money was deposited, nor that it was paid to the Governor. I will also state that I never kept this book; I believe the whole book is in the handwriting of Mr. Brock. Here is \$1,790, that, at a casual glance looks exactly like \$17,000. I think that is the item I had reference to.

Q. On what page of the book is this, Mr. Sweet?

A. On page thirteen. My recollection is, that when I was examining, I was very busy. I had very little help, and when I opened the book to examine it several gentlemen came in and I shut the book up, and attended to them. I was looking more particularly for the amount "17,000," and my recollection is, that I told Mr. Church that I found the item there of the deposit of \$17,000.

Q. Have you ever examined that book, or any other book, to see if there is any entry of that \$17,000?

Mr. REDICK. I object to that question.

Mr. ESTABROOK. I understood you to say when you was on the stand before, that you were present at an interview held between the Governor and the State Central Committee, at Omaha. Will you please state all that took place at that great convocation of the high cock-a-lorums of the great lights of the Republican party? [Laughter.]

Mr. MARQUETTE. I object to all this. The prosecution have gone over this once, and I think that should be sufficient.

Mr. ESTABROOK. I insist upon the question, I will put it in writing.

Mr. REDICK. Our objection is the same as to the other question. The

Senate have a right to say whether they will receive this or not; but, as a matter of policy, it ought not, as it will save three hours' time. I want that book taken down, Mr. President, and shown to the Senators, that they may examine that entry referred to by this witness.

(Book and entry examined by the Senators.)

Mr. ESTABROOK. Well, sir, take the witness.

Mr. REDICK. Well, sir—Mr. Sweet, that is all—that is all—that is all.

HENRY KÖENIG, sworn.

Mr. ESTABROOK. What office do you hold?

A. State Treasurer.

Q. State whether you have ever examined the books of the Treasurer to ascertain whether there ever was deposited there this 5 per cent. fund; if so, state the result?

A. I have examined that book there, and did not see any entry made there in regard to the 5 per cent. fund.

Q. Is there any entry of any money paid by the United States Government to the State of Nebraska?

A. Not to my knowledge.

Q. Have you examined?

A. Yes, sir.

Q. State whether you have ever seen these papers—mortgages and bonds—and if so, state under what circumstances?

A. I have seen the mortgages.

Q. State when, and where, and under what circumstances?

A. Somebody brought them in my office during my absence.

Q. When?

A. The same day the Investigating Committee enquired about the State Auditor and the State Treasurer, in regard to mortgages and lands. It was during the session of the present Legislature.

Q. Were those the same mortgages?

A. I believe I did not examine them.

Q. State what you did with them?

A. I did not know what I should do with them, and I had a conversation with the State Auditor; and after

that Governor Butler came in, and I handed back the mortgages to the Governor.

Q. How long after they were brought into your office was this?

A. About the time I saw them, and when I went to the Auditor, it was about a quarter of an hour. I don't know how long they were in my office.

Q. Where did you find them in your office?

A. My deputy handed them to me when I came back.

Senator THOMAS. State the name of your deputy?

A. G. W. Bartlett.

Q. At the time you first saw those mortgages were they not recorded?

A. I saw a part, where the endorsement was on of Pawnee County.

Q. You had a deputy?

A. Yes.

Q. Tell the Court what Governor Butler said to you about bringing up all the securities that the investigating committee might examine them?

A. I don't recollect that.

Q. Did he state to you, in your office, he wanted you to bring up all the securities for the school lands, that they might go before the investigating committee?

A. Not to my knowledge. I saw the Governor in the Auditor's office, not in my office.

Q. Then those mortgages were just as they are now?

A. I saw the package, but I did not examine them.

Senator HASCALL. You say the mortgages were left in the office of the State Treasurer in your presence, were the bonds also left there, and are the bonds now in the office of the State Treasurer?

A. This is the first time I have ever seen the bonds.

Senator THOMAS. Where have the bonds and mortgages been since that time?

A. I handed the mortgages back to Governor Butler, in the presence of the State Treasurer, the same day that I received them. I never had the bonds in my possession.

Senator HASCALL. Are the bonds or mortgages marked across the face with red ink, as provided by law in the case of securities belonging to the permanent school fund?

A. This is the first time I have seen these bonds. There is no endorsement.

Mr. ESTABROOK. Is the endorsement written on the same, as provided by law?

A. I have not seen any endorsement on the face since I had them.

G. M. BARTLETT sworn:

Mr. ESTABROOK. What is your name?

A. G. M. Bartlett.

Q. What office do you hold?

A. I am acting as Deputy State Treasurer.

Q. State whether you ever saw these bonds and mortgages; if so, state under what circumstances?

A. I should say that these bonds were a packet of mortgages sent to our office by Governor Butler. I can't give the exact date. At that time the Committee of Ways and Means were making up their report in reference to the report of the Auditor and Treasurer, and the same time these were sent by the Governor by Mr. Beecher, who said he was requested by Governor Butler to leave them in our possession. There were no bonds.

Q. What was done with the mortgages?

A. I handed them to Mr. Koenig. I should think about fifteen or twenty minutes after, stating that they had been left so and so. He took them, and I don't know whether he looked over all of them or not; my impression is, that he did not. He said to me "what shall we do with them?" I said that as we had no account on our books against Governor Butler we had no right to hold these mortgages.

Q. Who is Mr. Beecher?

A. I think he is a clerk in Governor Butler's office. I am not certain it was Mr. Beecher. It may have been Mr. Kellogg.

Q. The law says that it shall be endorsed across the face thereof "School" or "University" funds; take that (handing witness one of the mort-

gages) and see whether that provision of the law has been complied with?

A. I see no endorsement.

Q. Look at the others, please, and see if they are all alike?

A. What I have examined I see no endorsement upon.

Q. State whether any entries were made about the time of the deposit of these papers?

A. Nothing appears upon our books. I never saw the bonds before this.

Senator HASCALL. Are any of the bonds now on deposit in the State Treasury?

A. They are not.

Senator THOMAS. Were the bonds ever placed in the office of the State Treasurer?

A. Not in our office.

Senator THOMAS. Did you ever see these bonds before, if so, where and when?

A. I never saw these bonds before.

Senator THOMAS. Where have these mortgages been since they were first taken to your office?

A. That I cannot answer. I gave them in charge of Mr. Koenig, and I think he gave them to Gov. Butler, since then I know nothing about them.

Senator TUCKER. You say that the mortgages were placed in the office of the State Treasurer; who took them out from that office?

A. They were placed in the office of the State Treasurer, as I say. They were down to our office with the understanding they were to be placed there. Mr. Koenig took them out.

Mr. REDICK. Mr. Bartlett, did not you give an order to some one to get these bonds out of the bank of Sweet & Brock?

A. I gave an order to Mr. Kellogg, that if he had such bonds there, to deliver them to the bearer. I will say that the bearer never brought them to me. They called at the office for the bonds, saying they had been deposited with us. I told them they had never been in our office. I wrote a line to

Mr. Brock, saying if the bonds were there to send them up. I wrote to him in his individual capacity, directing to Nelson C. Brock.

Henry KENIG, recalled:

Senator THOMAS. When did you hand these mortgages to Gov. Butler, and why did you do so?

A. I handed the mortgages to Gov. Butler the same day I received them. I did not know what I should do with them.

Q. Did you mean that Gov. Butler told you in his office to go down and get all these securities to be used before the investigating committee?

A. Yes, sir.

Mr. ESTABROOK. Did you get any of these mortgages from Sweet?

A. No, sir.

Q. Did not Gov. Butler show you those mortgages at the time?

A. Yes, sir.

Senator GERRARD. To Mr. Bartlett, Deputy State Treasurer?

A. Yes, sir.

Senator TUCKER. Did Governor Butler ask you to give him the mortgages, after they had been placed in your office?

A. No; the Governor did not ask me for them.

Senator THOMAS. At whose request did you hand those mortgages to Governor Butler?

A. Well, I had a conversation with the State Auditor and he told me—

Mr. REDICK. I object to the witness stating what the Auditor told him.

Mr. ESTABROOK. State whether the Governor objected to taking them from you?

A. No, sir.

#### RESPONDENT'S REBUTTING TESTIMONY.

L. ALEXANDER, sworn:

Mr. REDICK. Look at those bonds and state to the Senate where you got them and at whose instance?

A. I got them at the bank of James

Sweet and Brock, on the order of the State Treasurer, Mr. Koenig, day before yesterday, the 20th or 21st.

Mr. REDICK. Mr. President, I will offer now in evidence the articles of consolidation of the Northern Nebraska Air Line Railroad, with the Sioux City and Pacific Railroad. (Admitted.) Mr. President that is our defense sir, and there we rest the case.

The PRESIDENT. Have the counsel for the Managers anything further to offer?

Mr ESTABROOK. No, sir.

Senator HASCALL. Mr. President, it is now 10 minutes of 12 o'clock, but to facilitate matters, I would suggest that the counsel would agree among themselves as to how they will make their arguments before we adjourn.

Mr. REDICK. I would like to know whether the counsel for the prosecution, desires three to address the court, or a less number. The way we did before, and the way, I believe, always adopted is to have two address the court. One opens, then two on our side follow him, and the other one closes; but if three speak, it will necessitate a different arrangement.

Mr. MARQUETTE. We desire that whatever authorities they have they introduce, so that we may reply to them.

The PRESIDENT. I will read the 20th rule:

"The case on each side shall be opened by one person. The final argument on the merits may be made by two persons on each side (unless otherwise ordered by the Senate upon application for that purpose,) and the argument shall be opened and closed on the part of the House of Representatives."

Mr. MARQUETTE. Then, under that rule, one of the Managers will open and one close. We will have two speeches. Of course we desire

under that rule to have it fully opened, that we may reply to all authorities introduced.

Mr. REDICK. Certainly. The counsel or Managers would not take any advantage. We expect every authority produced.

Mr. ESTABROOK. We fancy we know what the practice is. If we introduce, afterwards, important authority we had not before, of course they will have the right to answer. I presumed it was arranged this morning. I did not expect—

Mr. BRIGGS. I think the Senate is competent to pass upon this question. As far as I am concerned I would like to submit this case without argument. We cannot enlighten the Senate much.

Mr. ESTABROOK. We will take until the coming in this afternoon, to respond to that.

Senator THOMAS. I move that the Senate, sitting as a Court of Impeachment, take a recess until two P. M. Carried.

#### AFTERNOON SESSION.

The Senate met at two o'clock. The roll was called by the clerk, all the members answering to their names.

The PRESIDENT. Do the counsel and Managers desire that we adhere to rule twenty? I will read the rule:

"The case on each side shall be opened by one person. The final argument on the merits may be made by two persons on each side, (unless otherwise ordered by the Senate, upon application for that purpose,) and the argument shall be opened and closed on the part of the House of Representatives."

Mr. REDICK. We are satisfied with the rule. I would like to know whether the counsel for the prosecution desire to submit the case without argument.

**Mr. ESTABROOK.** The Managers have consulted together with regard to this matter, and have decided that it would not be advisable to submit a case of as great importance as this without argument. It will devolve upon me to open the argument on the part of the prosecution. I have packed up my books, expecting to leave on to-day's train, and I shall ask a little indulgence from the Senate. Under the circumstances, we ask for an adjournment until to-morrow morning. We have prepared a little arrangement which we will submit. I shall open the argument; the defense will follow with such counsel as they choose; then Manager Hudson will follow; then other counsel on the part of the respondent, and then Manager Doom; and after Manager Doom, and counsel for the other side, the argument to be closed by Manager Porter.

**Mr. REDICK.** Then, Mr. President, I understand this will require a change of the rule which provides that two on a side shall discuss this question. I will not object to all the Managers speaking, but they can file their written argument as was done in the Johnson case. Then they can put their written argument upon file and this will appear upon the record. But if all these men speak on the part of the prosecution, we will have to send for another man, as there are but three of us. I do not know what authority the gentleman will want to introduce, but it strikes me that this whole case depends upon the facts detailed by the witnesses, and these will either acquit or convict. While I am not fractious with the gentleman as to the time he shall have to prepare, still we have, since the beginning, asked that this trial go on with reasonable speed until it is closed. One of us will follow one of these gentle-

men, and then the other; and the argument be closed by the prosecution. Mr. Briggs does not wish to speak, and that leaves two of us against two on the other side. Would it not be just as well for Mr. Hudson and Mr. Doom to both submit their argument in writing? Mr. Doom is a ready writer, and if an able argument is presented by the latter gentleman, it may have some effect on his prospects for Governor.

**Manager PORTER.** I would like to ask the counsel for the respondent if they would object to putting this over until to-morrow?

**Mr. REDICK.** I see no reason why you should not be able to go on.

**Manager PORTER.** Mr. President, I apprehend that this matter of a recess until morning, can be disposed of, but I think the first thing to be determined is the application of the counsel for the respondent for a modification of Rule 20.

**Senator GERRARD.** I desire to offer this order, which the President will please read.

**Mr. PRESIDENT.** Gentlemen, the following order is submitted by the gentleman from Platte.

*“Ordered, That the twentieth rule be suspended, and that persons be heard in the following order:*

- 1st. Counsel for State.
- 2d. Counsel for Respondent.
- 3d. One of the Managers.
- 4th. Counsel for the Respondent.
- 5th. One of the Managers.
- 6th. Counsel for the Respondent.
- 7th. One of the Managers.

**Mr. HASCALL.** Mr. President, I move to amend the order by putting the name of one of the Managers first, instead of the counsel for the State.

**Manager PORTER.** Mr. President, I do not desire to be captious about this matter, but I hope this order will not be pressed. We have concluded

that the counsel for the State had better present his arguments and authorities first, and have arranged according to that calculation. It seems to me a delay until to-morrow morning would not be unreasonable. The rapidity with which this evidence has been taken, and the little time for the parties having the matter in charge to digest it, I think it would be reasonable to have a recess till to-morrow morning. There is no other case on record that has been conducted so rapidly.

Manager DOOM. There appears to have been a misunderstanding, at least so far as I am concerned, as to the closing arguments. I took your 20th rule, prescribing the arguments, and my understanding was that the counsel and Manager Porter would close the case. With that view, I did certain work assigned me, and made no calculation to speak, and did not, and have not prepared myself. Last night was the first I heard of it, and am wholly unprepared. I have not arranged the first thought, and hope the Senator from Douglas will not present his amendment, as it would take me at a disadvantage.

Manager HUDSON. Mr. President, I ask the privilege of offering a few thoughts touching this order, and while I thank the Senator for the courtesy, extending the privilege for all the Managers to take part in the argument, I do not consider it necessary; and while I cannot consent to the respondent's proposition to submit the case without argument, yet I do not want to inflict upon this Senate the tediousness of listening to seven speeches. Such would be the result if the order is made. Rule 20 fully meets the case, and, I hope, will be adhered to. I desire not to spread myself upon the pages of this trial in a speech that is a doubtful, empty

honor; and as Mr. Redick, respondent's counsel, says he shall require the arguments of Managers Doom and Hudson submitted in writing, I must most respectfully decline. Why, sir, I have delivered a great many speeches and sermons, but I never wrote one out yet. I never had time. I was denied the privileges of an education in my boyhood; my habits of thoughts were trained while learning my trade at the work bench, and whatever speech or argument I may make in this case, it will be spontaneous, hot and heavy, coming from my heart; gathered from the evidence as presented to my mind while upon my feet. I expected no part in speech making. I entered upon the duty assigned me by the managers, in connection with Mr. Doom, to collate the testimony and procure the witnesses. That duty Mr. Doom and I have labored to discharge, how faithfully, the Senators and the people must decide. In response to their requests, echoing athwart these prairies, I have labored to bring the charges against Governor Butler home to him. Mr. Redick, counsel for the respondent, at the commencement of this trial, declared his object was to send the Governor home. There can be no argument between us, for I have been laboring to send him home. I want him to go home, and *stay* there, and take me with him if he wishes to. Senators, I do not care for any more glory than I am entitled to, and I do not think that glory will be enhanced by listening to the sound of my voice, and that of Manager Doom. It will only be like the gurgling of the waters as they fall over the cataract, lost in the silence of the distant dell. I prefer that these two gentlemen, Estabrook and Porter, should present our case to you, and share all



the glory and the light that surrounds this unenviable prosecution. I learned, with much surprise, from the remarks of Mr. Redick, the respondent's counsel, that Manager Doom was expected to step into the Governor's shoes. For the benefit of counsel, I pledge you, Mr. Redick, that when Manager Doom becomes Governor of this State, I will become your rival for United States Senator. I hope you will release us, and let the honors rest upon the heads of those two gentlemen, whose future will be brilliant and whose brilliancy we should only be calculated to diminish. Senators, you have heard all the speech that you will get from me on this occasion. I hope the order will be withdrawn, and the rule permitted to remain.

The PRESIDENT. The question is upon the amendment offered by the member from Douglas, that the arguments be arranged as follows:

- 1st. One of the managers.
- 2d. Another manager.
- 3d. One of the counsel for respondent.
- 4th. Counsel for prosecution.
- 5th. Remaining counsel for respondent.
- 6th. Closing argument by a manager.

Mr. REDICK. Under the statement of the honorable manager I suppose that rule could not be carried out.

Senator HASCALL. It would simply be them that one of the managers would waive.

The PRESIDENT. The question is upon the amendment. As many as are of opinion that the amendment be adopted, will, as their names are called, answer "aye;" those opposed will answer "nay."

Senator CROPSEY. Before the

vote is taken I would like to know if that is satisfactory.

Mr. MARQUETTE. There are two of us and we would like to have a right to open. We want the authorities before us.

Senator HASCALL. I understood three were going to speak. If only two I withdraw that.

The PRESIDENT. The amendment is withdrawn. \*

Senator GERRARD. Do I understand that the original motion is agreeable to both parties?

Mr. REDICK. Yes; to stand by rule 20.

Mr. BRIGGS. It seems to me, Mr. President, that this rule 20 should be observed, and that two counsel on the side can present all that could be presented on a side. On our side, the question will be between Redick, Marquette and myself.

Manager PORTER. Mr. President, under the present arrangement, with the withdrawal of Mr. Hudson, it will only leave three speeches on the part of the prosecution. I would desire that the rule be so modified as to allow Manager Doom to make an argument in this case. We have no more counsel than the respondent has; there are three of them, and three of us.

Mr. REDICK. Our colleague, Mr. Briggs, says he does not desire to address the Senate. We know what the rule is, and we desire to adhere to the rule.

Senator HASCALL. I move that the Senate, sitting as a Court of Impeachment, adjourn until to-morrow morning at 9 o'clock.

Carried.

**Tenth Day's Proceedings.**

March 24, A. M.

Senate called to order. Prayer by the chaplain.

The PRESIDENT. The hour having arrived fixed by the Senate sitting as a Court of Impeachment for the trial of David Butler, Governor of the State of Nebraska, the Sergeant-at-Arms will make the usual proclamation. (Proclamation made.)

The PRESIDENT. The Secretary will call the roll of the Senate.

All the Senators present.

The journal of yesterday was read and approved.

The PRESIDENT. The honorable Managers will now proceed with the argument.

Senator THOMAS. I understand no order has been made changing the 20th rule?

The PRESIDENT. No.



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**CLOSING ARGUMENTS**

**IN THE**

**IMPEACHMENT TRIAL.**

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**PART IV.**

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## CLOSING ARGUMENTS.

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### ARGUMENT OF MR. ESTABROOK.

**Mr. ESTABROOK.** Mr. President, Senators, I may be allowed to congratulate myself—

**Senator HASCALL.** If the counsel will excuse me. I understand Manager Doom wishes to introduce his argument in writing; and, if there is no objection, it might be well enough to understand that.

**The PRESIDENT.** If there is no objection—

**Mr. MARQUETTE.** We should like it to be filed.

**The PRESIDENT.** Certainly.

**Mr. MARQUETTE.** We would like him to speak it.

**Manager DOOM.** I have not written it yet. I feel it due to the State and the Managers that we should present the case as clearly and forcibly as we can.

**Mr. ESTABROOK** then resumed his speech. He said—I take pleasure in tendering to you the congratulation that I feel is due to all, myself included; and, perhaps, we might extend to the State at large, that we have now arrived at a point approximating the close. And, in this same connection, perhaps, it would not be out of place to add another suggestion in this behalf. There are some extraordinary attitudes assumed in this proceeding. In the first place, I believe, upon an examination of all the impeachment cases, in this country

at least, there is one feature about this trial which is not presented in any other case that has ever been on trial in an impeachment court. I read in the papers of yesterday, in the telegraphic despatches, that the Governor of North Carolina has been upon trial before an impeachment tribunal, and has been found guilty by a large majority, and, it was added, that the result had been attained by a strict party vote. But in this case a different aspect is presented. Whatever result is to be attained it will not be reached by anything that looks even, or resembles a party vote. I believe in no instance of an impeachment trial in this country, and I presume no other, has the spectacle been presented, of a political party, strongly in the ascendant, largely in the majority in the State, largely in the majority in the administration of the State, largely in the majority in both houses of the Legislature, that have the duty to perform which is now devolving upon this body. I say the spectacle has never been presented where these majorities prevail in all the departments of the Government, in a State where that same party, upon its own motion, at its own suggestion, constrained by that which it deemed its duty under the circumstances—has seen fit to inaugurate proceedings of this character against one of their own officers, and that its chief officer—the Governor of the State—in order to enquire and ascertain, judicially, whether or not offenses have been committed of a character, graver, more important to the interests of the State, to the interests of all the parties involved, than in any case that has

ever been tried in the United States of America, either before Congress or one of the State tribunals. If you would indulge me, I would say, at the outset, so that nothing in the nature of party can creep into this thing, I believe it was a Republican who first moved to impeach the Republican Governor; I believe it was a majority composed of Republicans in considerable part who acquiesced and co-operated in the action that has resulted in this trial. And I believe there is a majority of Republicans in this body. Who they are I do not know, I could not say which is Democratic and which Republican, but I believe all are animated with one common purpose and design, and that is if it should be found there have been such offences habitually committed upon the part of the Governor as are charged, you will do your whole duty and administer justice, regardless of party considerations; looking only to the law and the testimony.

It will be seen, by reading over the articles of impeachment, that the offences charged are varied; that they are as varied as have been the duties of the Executive. This is an extraordinary feature. In the most cases, there has been a single crime charged. In the case of Judge Peck, it was habitual drunkenness and profanity; in that of Judge Chase, it was giving an improper charge to the jury, at an improper time; and so, in many cases, it has been but a single charge. But in this case an investigation has been had by a committee composed of members of this body, and grouping together all the transactions of the State officers for the last two years, it was, as ascertained, that some offences had been committed in nearly every department in which the Governor has been called upon to act. That these we are called upon to review are merely specimens of the balance, will not be wondered at, if we recollect for a moment that the respondent has been Governor ever since he was elected, six years ago, up to the present time, and up to that time he has kept the evidence, so far as he could do it, under lock and key, and that key in his own pocket, or else in the pocket of some one faithful to the duty of keeping his acts secure from public

scrutiny; and if in many instances it has been found that witnesses who went with great alacrity before that investigating committee, ready to give testimony, but who, when called upon to come before this court, have mysteriously disappeared, you will not wonder that we have been compelled to abandon some portion of the charges.

It seems to me that the counsel for the respondent are not thoroughly posted in regard to the nature of an impeachment. It will be remembered that when the counsel for the respondent addressed the Senate, it was admitted, and has been admitted everywhere, on the part of the Governor's counsel, and by his friends and champions, that he has done things he ought not to have done, and neglected things he should have done; and Mr. Redick, I think, stated that he did not stand up and say he had not done these things, but that he had done them with good intent. But he insists Governor Butler is a rough, rollicking man, who does not stand on trifles. If he has taken \$17,000 which belonged to the State, it must be overlooked, or charged to the eccentricity of "His Excellency." Now, whether the Governor has taken this money, or done the other acts with which he stands charged, because of his rollicking good nature, or brain malice aforethought, is a matter which I presume you will not seriously consider.

The result to the State and its interests is the same in either event. Whether the real administration of this respondent results from evil intent, habitual neglect of duty and disregard of law, from drunkenness, from lunacy, from idiocy, or other incapacity, the detriment to the public is the same. Such exercise of his functions is in every case equally dangerous, his removal from a position of trust and power equally demanded, and the misdemeanor in office equally exhibited. The horse jockey assured the purchaser that the animal never kicked. The next day a vicious blow from the horse's hind foot broke his master's leg. When the jockey was charged with the false representation, he still persisted that the animal never kicked, but that he had always been known to have a playful way of

extending the muscles of his hind leg. The result to the purchaser, however, was nearly the same as though the horse had kicked. I leave it for the respondent's counsel to apply the illustration.

Now, the primary object of this court of impeachment is not to punish. The District Court and the Justices courts are the tribunals whose peculiar province it is to inflict punishment; but the design of a court of impeachment is to deprive an offender of political capacity, and inflict such punishment as will prevent malfeasance and misdemeanors in office. If the Governor of this State, or any other officer, be addicted to drunkenness, or had in any other way so impaired his mind as not to be able to discharge the duties of his position, that would be a misdemeanor in office. But, gentlemen, in order to understand this point clearly, I will call your attention to a few authorities, and will say that these authorities run through all the books which treat upon the subject of impeachment, I read from an article by Judge Lawrence, published in the American Law Register, page 644. You will find this article incorporated into the brief of Mr. Butler in the Johnson trial. An article had been prepared by Theodore Dwight and read before the students of the Columbia College Law School, in which he drops this paragraph: "No offense is impeachable, unless it is indictable," and that it is which brought out this argument from Judge Lawrence. I read from American Law Register, page 644: "Subject to these modifications, and adopting the recognized rule, that the Constitution should be construed so as to be equal to the occasions for its exercise, and to accomplish the purposes of its framers, impeachment remains here as it was recognized in England at and prior to the adoption of the Constitution." Then I have marked a paragraph which I find here in Bayard's speech, which, in a very few words, defines the real nature of an impeachment, page 644 of the American Law Register: "Impeachment is a proceeding purely of a political nature. It is not so much designed to punish the offender as to secure the State. It touches neither

his person nor his property, but simply divests him of his political capacity."

Then on page 646 we find, "Whatever 'crimes and misdemeanors' were the subjects of impeachment in England prior to the adoption of our Constitution, and as understood by its framers, are therefore subjects of impeachment before the Senate of the United States, subject only to the limitations of the Constitution."

\* \* \* \* \*

They saw that the high court of impeachment took jurisdiction where no indictable crime had been committed, in many instances, and there were then, as there yet are, two parallel modes of reaching some, but not all offenders; one by impeachment, the other by indictment."

Again, on page 647 we find the following:

"The authorities are abundant to show that the phrase 'high crimes and misdemeanors,' as used in the British and our Constitution, are not limited to crimes defined by statute or as recognized at common law. Christian, who may be supposed to have understood the British Constitution, when he wrote, says 'when the words *high crimes and misdemeanors* are used in prosecutions by impeachment, the words 'high crimes' have no definite signification, but are used merely to give greater solemnity to the charge."

And then on page 649—

"Indeed, the word 'misdemeanor' has a *common-law*, a *parliamentary*, and a *popular sense*. In the parliamentary sense, as applied to officers, it means "mal-administration," or "misconduct," not necessarily indictable, not only in England, but in the United States. Demeanor is conduct, and he is guilty of misdemeanor who misdeems or misconducts. The power of impeachment, so far as the President is concerned, was inserted in the Constitution to secure "good behavior," to punish "misconduct," to defend "the community against the incapacity, negligence, or perfidy of the chief magistrate;" to punish "abuse of power," "treachery," "corrupting his electors;" or, as Madison declared, "for any act which might be called a misdemeanor."

Then, over here on page 648, he says:



"Lord Viscount Melville was tried on an impeachment, for that, as treasurer of the navy, he *used, for purposes of private gain*, the public money, not with intent to defraud the government out of any part of it."

Perhaps we will find something in this case pretty nearly paralleling this case, too, before we get through.

"The defense was, that he had a right to use it."

"The lords submitted to the judges of the common pleas, questions:

1. Whether it was unlawful to draw public money in advance of the time it was needed for public use, but for the purpose of having it for that use?

2. If such act was an offense?"

Now, then, the next is the reference here to the debates in the Senate of the United States, on the subject of impeachment, the following clause, relative to the President, being under consideration:

"To be removable on impeachment and conviction for mal-practice or neglect of duty." Mr. Pickney moved to strike out, and said: "He ought not to be impeachable while in office."

"Mr. Darce—If he be not impeachable while in office, he will spare no efforts or means whatever to get himself re-elected. He considered this an essential security for the GOOD BEHAVIOR of the Executive."

"Mr. Wilson concurred."

And then comes what old Dr. Franklin said:

"Dr. Franklin was for retaining the clause as favorable to the Executive. History furnishes one example only of a first magistrate being brought to justice."

And that was the case of Warren Hastings, which was on trial I believe at the time.

"Everybody cried out against this as unconstitutional. What was the practice before this in cases where the chief magistrate rendered himself obnoxious? Why, recourse was had to assassination, in which he was not only deprived of his life, but of the opportunity of vindicating his character. It would be the best way, therefore, to provide in the Constitution for the regular punishment of the Executive, where his *mis-conduct* should deserve it, and for his honorable acquittal,

where he should be unjustly accused." "Mr. Madison thought it indispensable that some provision should be made for defending the community against the *incapacity, negligence, or perfidy* of the chief magistrate. The limitation of the period of his service was not a sufficient security. He might lose his capacity after his appointment."

The point I was making at the outset.

"He might pervert his administration into a scheme of peculation, or oppression. He might betray his trust to foreign powers."

In the case of the Executive magistrate, which was to be administered by a single man, loss of capacity, or corruption was more within the compass of probable events, and either of them might be fatal to the Republic."

Page 651. "Mr. Gerry urged the necessity of impeachments. A good magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maxim would never be adopted here that a chief magistrate could do no wrong."

Mr. Randolph—"The propriety of impeachments was a favorite principle with him. Guilt, wherever found, ought to be punished. The Executive will have great opportunities for abusing his power."

He applies it, of course, to the President there, but it is equally applicable to the Governor of the State.

"Mr. Morris— \* \* \* The Executive ought to be impeached for treachery. Corrupting his electors and incapacity were other causes for impeachment. For the latter he should be punished, not as a man, but as an officer, and punished only by degradation from office."

"The proposition was agreed to by a vote of eight States to two." So that this reasoning was received in that Court.

And then again, on page 653—"The Constitution contains inherent evidence, therefore, that as to Judges, they should be impeached when their behavior was not good, and the Senate are made the exclusive judges of what is bad behavior."

"The words, 'bad behavior,' are borrowed from the English laws, and have been construed there in the way

to enlarge the scope of impeachments to a wider range. They were first introduced into the English Constitution to procure the removal of officers who, on trial, might prove too ignorant to perform their duties. These general views are sustained by the opinions of the framers of the Constitution, declared by themselves in convention by Madison." Following the example of Great Britain.

On page 655, "Curtis, in his history of the Constitution, says although an impeachment may involve an injury, whether a crime against any positive law has been committed, yet it is not necessarily a trial for crime, nor is there any necessity, in the case of crimes by public officers, or the institution of any special proceeding for the infliction of the punishment prescribed by the laws, since they, like all other persons, are amenable to the ordinary courts of justice, in respect of offences against positive law. The purposes of impeachments lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for the removal of a public officer from office. Such a cause may be found in the fact, that either in the discharge of his office, or aside from its functions, he has violated a law, or committed what is technically denominated a crime. But a cause for removal from office may exist where no offence against positive law has been committed, as where the individual has, from immorality, or imbecility, or mal-administration, become unfit to exercise the office. The rules by which impeachment is to be determined are therefore peculiar, and are not fully embraced by those principles or provisions of law, which courts of ordinary jurisdiction are required to administer."

I will quote one or two further, on page 657. "Rawle, in his work on the Constitution, says: 'The delegation of the important trust, affecting the higher interests of society, is always, from various causes, liable to abuse. The fondness frequently felt for the inordinate extension of power, the influence of party, and of prejudice; the seductions of foreign States, or the baser appetite for illegitimate

emolument, are sometimes productions of what are not inaptly termed, political offences.'" (Federalist, No. 65.)"

Chancellor Kent says: "If the President will use the authority of his station to violate the Constitution or law of the land, the House of Representatives can arrest him in his career by resorting to the power of impeachment."

And then this, on page 257: "The system of impeachment is to be governed by the great general principle of right, and it is less probable the Senate will depart from this than that the whole Legislature would in the enactment of the law, or than courts establishing the common law. The Constitution has inherent evidence that the indictable character of an act does not define its impeachable quality."

"It has already been shown that the framers of the Constitution regarded the power of impeachment as a means of defending the community against the incapacity of officers."

This clause of the Constitution recognizes the same view: Art. 2, Sec. 1. \* "Congress may by law provide for the case of \* \* \* inability, both of the President and the Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed, or until a President shall be elected." "These and the power of impeachment are the only modes of getting rid of officers whose inability from insanity or otherwise renders them unfit to hold office, and whose every official act will necessarily be a misdemeanor."

"As to the President and Vice-President it was necessary to give Congress the power to designate a successor, and so to determine disability. As to all other officers the constitution or laws define the mode of designating a successor, and it is left to the impeaching power to remove in case of insanity or misdemeanor arising from that or other cause. It cannot be supposed that the whole nation must suffer without remedy, if the whole Supreme Court or other officers should become utterly disabled from the performance of their duties, Such an occurrence is

within the range of possibility, if not probability."

"Treason, bribery, and other high crimes and misdemeanors, are, of course, impeachable. Treason and bribery are specially named, but other high crimes and misdemeanors are just as fully comprehended as though each were specified. This Senate is made the sole judge of what they are. There is no revising court. The Senate determines in the light of parliamentary law, Congress cannot define, or limit by law, that which the Constitution defines in two cases by enumeration, and in others by classification, and of which the Senate is the sole judge."

Then I will call your attention again in this direct connection to a paragraph which I read to you on a former occasion, and I desire you to notice its application here to this case.

On the trial of Mr. Chase, Mr. Nicholson said: "You, Mr. President, as Vice President of the United States, together with the Secretary of the Treasury, the Chief Justice and the Attorney General, as commissioners of the sinking fund, have annually at your disposal \$8,000,000, for the purpose of paying the national debt. If, instead of applying it to this public use you should divert it to another channel, or convert it to your own private uses, I ask if there is a man in the world who would hesitate to say, that you should be impeached for this misconduct, and yet there is no court in this country in which he could be indicted for it."

The Senate will remember that they are commissioners and he lays it down that they should be subject to impeachment for misdemeanors done as commissioners, and that view is strengthened by the fact that they could not be indicted. And again he says:

"If a judge should order a cause to be tried with eleven jurors only, surely he might be impeached for it, and yet I believe there is no court in which he could be indicted." (2 Chase's Trial 339.) On Chase's trial Mr. Rodney said: "I think I can put

\* \* \* striking cases of misconduct on a judge for which it must be admitted that an impeachment will lie,

though no indictment [at common law] could be maintained."

He puts the cases:—If a judge at the time appointed for court "should appear and adjourn the court, and notwithstanding there was pressing business to be done, he should proceed knowingly and wilfully to adjourn it until the next stated period."

\* \* "Suppose he proceeded in the despatch of business and from prejudice against one party, or favor to his antagonist, he ordered on the trial of a cause though legal grounds are exhibited for postponement."

"If, when the jury return to the bar to give the verdict, he should knowingly receive the verdict of a majority."

"Were a judge to entertain the suitors with a farce or a comedy, instead of hearing their causes, and turn a jester or buffoon on the bench, I presume he would subject himself to an impeachment."

Then in the text on page 666—

"If a judge should persistently hear the arguments of one party to causes privately and out of the court, the evil would become so intolerable in an officer holding for good behavior, that he should be removed."

This authority adopts this view and puts it in the text.

"If the President should hold out promises of offices of honor and trust to the friends of Senators to influence their votes, the consequences might be so pernicious and corrupting, especially in an hour of national peril, when a single vote might decide the life of the government, that the safety of the Republic would demand impeachment. Such a President would violate his oath, *faithfully* to execute his duties.

There are many breaches of trust not amounting to felonies, yet so monstrous as to render those guilty of them totally unfit for office."

Now, passing over several places I had marked I will simply ask your patience while I read one or two more authorities. I come to one on page 647.

Judge Addison, in his defence said:

"No impeachment will lie but for a misdemeanor in office, and every misdemeanor in office is indictable; the officer impeached still remains liable to

indictment, trial, judgment, and punishment according to law. An impeachment lies only where an indictment lies. No officer can be convicted on an impeachment, who ought not be convicted on an indictment, and the punishment on impeachment is commutable?

The acts for which an officer may be impeached are precisely those for which he may be indicted as an officer: Misdemeanors in office, offences or unlawful acts done with an evil intention in his official capacity."

"A mere unlawful act from a mistake or error in judgment cannot be alleged as a [impeachable] crime. Not only wrong, but wilful wrong must be made out, or the offence is not complete."

"Though a judge acts unlawfully and unconstitutionally, he cannot be convicted on an impeachment unless he has acted wilfully so."

"But this position was denied, and Addison was found guilty by a vote of 20 to 4."

So it was there shown, gentlemen, that the misdemeanor must not necessarily be done wilfully and with deliberate intent, as in case of crimes.

The following is a list of Massachusetts cases tried in a court of impeachment:

First—Impeachment of William Greenleaf, Sheriff of Worcester county, 1788; convicted—1st. Of detaining for his private use public moneys, when the Commonwealth has a right thereto. 2d. Of exhibiting dishonest accounts of taxes collected. 3d. Of detaining, for two years, public moneys from the town of Petersham. 4th. Of procuring from the Treasurer of the Commonwealth an execution for money previously collected by him. 5th. Of false returns on executions. 6th. Of procuring a warrant of distress for money previously paid him.

Second—Impeachment of William Hunt, a justice of the peace of Watertown, 1794. Convicted of entering on his docket, on the trial day of causes, the personal appearance of plaintiffs, who were absent, though defendants demanded their appearance. The Senate found Hunt guilty, but suspended judgment for one year.

Third—Impeachment of John Vinal, Justice of the Peace for Suffolk county,

convicted of extortion and bribery—1800.

Fourth—Impeachment of Moses Copeland, a Justice of the Peace for Lincoln county, acquitted on charges—1st: That he bought a note endorsed in blank —, in name of Samuel Kingsbury, and rendered judgment, though, in fact, the note was Copeland's. 2d: For defaulting a defendant, and entering judgment before the hour set for trial. 3d: Bribery—1807-8.

Fifth—The impeachment of James Prescott, Judge of Probate for Middlesex, convicted of exacting illegal fees, and of inserting an interlineation in a guardian's account, previously sworn to, an item due to and paid to himself, and then of settling the account as judge—1821.

That case I have not examined thoroughly; but there is, in the library below, "The Life of Webster," who was one of the attorneys for the respondent in this case. I have read his speech through and through. He only makes the one point and that is "the law of Massachusetts," provided that in the case of the appointment of a guardian for infants certain fees should be allowed to the Judge of Probate. It had also the authority to provide guardians for lunatics, but the statutes omitted to state what fees he should have for performing that duty, and the judge made out the papers and gave the appointment in the case of lunacy, and charged the fees he would be entitled to in the case of infancy. In this, the only point, Webster, in 1821, then in the full meridian strength of his intellect, upon that point he failed, because his client was convicted by an overwhelming majority and removed from his office. I have several more to the same effect, but I will not weary your patience further. I have deemed it my duty, as authorities were at hand, and from suggestions from an honorable Senator wanting to know, jocularly perhaps, what it was that a man was to be impeached for, what was an official misdemeanor or misdemeanor in office, what constituted an impeachable offence; to make this exposition of what may be impeachable offences and here you have the answer. It is anything wherein a

chief magistrate or other impeachable officer, *misdeameans* or *misbehaves* himself, of course regulated by the discretion of the court; and no appeal being allowed from it, as to whether such misdemeanor or misbehavior is detrimental to the public interest. If it is a mere matter of misbehavior, and does not affect the public weal, as a matter of course, such a matter, while it would be in the power of the Court to remove him from office, even this example was deemed a bad one. It is so laid down in Story, yet we do not suppose that any Senate, sitting as a court, would, unless it was of such a character, deem it their duty to exercise this extraordinary power. Now, having laid down the foundation thus, that we may see what we are about, let us proceed. The Constitution says "the Governor is liable to impeachment for misdemeanors in office." That connects the whole thing together, proving further that the individual, when impeached under this mode of proceeding, to remove him from office, or disqualify him if you please, that nevertheless the ordinary tribunals might proceed against him. And we shall show you in regard to one of these offences charged here, that if you were twelve men sitting before Judge Lake as a court of criminal jurisdiction, now to-day, and he being the officer to sit instead of the President of this body, and he were indicted for it, you must find him guilty and send him to the penitentiary for a term not less than one nor more than 21 years. So that if counsel agree it should be a crime positively, we undertake to say the testimony is not wanting to show that an offence has been committed, that would not only justify but constrain the court to incarcerate him for a period of not exceeding 21 years. In preparing these articles I inserted, what I need not have done, the law, that we might have it before us; the law under which the five per cents were secured. You will see it is made the duty, after a preamble reciting the law, section 12 of the Enabling Act, under which we were admitted into the Union, and recited that by virtue of it we are entitled to five per cent. of the proceeds of the

public lands, and that the same was then due.

"*Resolved*, That the Governor of the State is hereby authorized and directed to bring the matter to the attention of our Representative and Senators in Congress, and request them to unite with him in endeavors to secure the same to be paid over to the Treasurer of State at as early a day as is possible. And the Governor is hereby authorized to employ any other and further assistance that may be necessary to secure that result."

Now, then, it becomes, perhaps, at the threshold of this thing, an important inquiry as to what was the duty of the Governor of Nebraska under that law. The law is that authority. Without it he never could have obtained it. But let us see what was the duty of the Governor. Now, under this clause, was it the duty of the Governor himself to take that money into his hand and bring it here? Was he made, at all, the custodian of it? Now, it has been argued here, upon the part of the respondent, as though he was charged with the duty of going there and receiving and taking it, putting it in his own satchel and bring it here. That is not the requirement of the law. He is "authorized to employ any other and further assistance that may be necessary to secure that result." What result? Why, to secure the "result of causing the same to be paid over to the Treasurer of State, at as early a day as possible." To secure the money to be paid over to the Treasury of the State of Nebraska. Now, let us see what he did. He says in his answer, not only, but he says in his communication to the Legislature, which is in evidence before you—and it is proven, I think; any way, this is sufficient proof—that he, in company with one E. B. Taylor, visited Washington in the spring of 1869, and took such measures as enabled E. B. Taylor to bring the money as far as Omaha, where he deposited it in the First National Bank; and it would seem—and we have no doubt it is true, because that is the usual way of doing business—that the Treasury warrant, or order, or whatever was the evidence of indebtedness, was made payable to

the Governor of the State, the Department paying it to the State, and they regard the Governor as the embodiment of the State, and when they deal with the State they deal with the Governor, or, if the Legislature be in session, they deal with both; but, in the absence of the Legislature, they regard the Governor as the head. It came payable to the Governor. He did not know in what form it came. Now comes the interesting portion of this performance. How was he to procure it and bring it to Lincoln? Was the enquiry made, "Now, what message shall I send in obedience to this resolution, to 'secure the result'?"—the result of placing it in the Treasury of Nebraska? Was that the enquiry raised upon the part of the Governor? No. The first we hear of it is through the lips of N. C. Brock. N. C. Brock states before this body that the Governor told him that he had an amount of money in the First National Bank at Omaha,—whether it was public funds or something else, he did not know. But in order to enable him to procure it, it was safe, at least, and he knew it was at Washington, to affix the Great Seal of the State; and thus provided with the necessary muniments of authority, he proceeds, makes the endorsement and procures the money—\$16,000—possibly minus the amount of \$300—is his impression, or he thinks he paid to take up a note for Gov. Butler. And what are the authorities? The books show probably the amount with the exception of that \$300. I will assume it to have been. It is shown by the evidence, upon the books themselves, so pointed out by McConnell, that it was short just about that sum; and the balance he brings, and puts it in his carpet sack; and that it comes into the banking house of Sweet & Brock. McConnell, at the time, being a partner. Well, you say, that is public money. Of course it is, and what is to be done with it? What constitutes a deposit of public money on the part of a public officer? A county treasurer, for instance. You send Mr. Thomas, the county treasurer of Nemaha county, to Lincoln to deposit some money, and what does he take

back? Is it sufficient, when he returns, to tell the Board of County Commissioners that he went, and, finding no one there, he simply tucked it under the crack of the door? And is that a deposit in the Treasury of the State by the treasurer of the county? Are you going to be stuffed with silly nonsense of this character? That when it has been casually laid upon the counter there, or for convenience simply set in a safe, under lock and key, are you going to allow yourselves to be stuffed with the idea that that is a deposit; that a county treasurer, or any other public officer, has done his duty in going through a farce like that? Why, I take it that you are men of sound sense and not members of the lunatic asylum here. You are not there yet, and to argue such silliness as this would pre-suppose you were going there. If such reasons could find credence, I would suggest that the Tichenor House be purchased for an idiotic asylum, and that such as could be made to entertain such reasoning should have apartments therein at once.

Now, let us see what is to be done to constitute a deposit. I will call your attention to page 161 of the Laws of Nebraska, 1869, to an act entitled an act to require the Treasurer to keep constantly on hand the identical funds received by him as such Treasurer until the same shall be paid out on warrants drawn on such Treasurer. Approved February 15, 1869.

Approved! *Approved!!* I want to have it understood, February 15, 1869, by him, David Butler, Governor of the State of Nebraska. He knew the contents and was not ignorant. He knew that he had taken an oath faithfully to perform his duty; and one of those duties was to see the law faithfully carried into effect. Let us see the manner in which the law discharged the duty devolved upon him by this act.

I read from page 161, Laws of 1869, Sections 2 and 3. "That it shall be the duty of the said Treasurer, at the time of receiving any public funds belonging to this State, to make out a full statement and description of each note, bond or bill so received, giving the date, denomination, and character of

the money, bonds or notes so received, and on the last day of each month, such description and statement, shall be sworn to by such Treasurer and filed by him in the office of the said Auditor.

That it shall be the duty of the Secretary of State to examine the funds in the hands of said Treasurer, and ascertain whether the sum corresponds with the description of such funds on file in the office of the said Auditor, which examination shall be between the third and sixth days of each month, and if the said Secretary of State shall find the funds in the Treasury the same as described in the Treasurer's statement provided for herein, with the exception only of funds which may be paid out as aforesaid, on orders drawn on the Treasurer; the Secretary shall certify to the fact, under oath, and file the same with the Auditor. And when any order so drawn on the Treasurer shall be by him paid out of any funds so described in his said statement, he shall furnish the said Secretary a full description of the order so redeemed, which statement shall be filed with the said Auditor."

So, you see, the law requires the State Treasurer to make out a statement showing the condition of the State finances, every month, and file it with the State Auditor; so that you need not go to the State Treasury at all to find how our finances stand.

Section 4 reads as follows: "That if the said Treasurer shall fail to exhibit to the said Secretary of State, when he shall be called on therefor, any part of the public funds which may have come into his hands as such Treasurer; or any of the bonds, or orders or warrants drawn on such Treasurer, and by him redeemed, with the public money, then, in that event, the office of the State Treasurer shall become vacant, and this vacancy shall be filled as provided by law."

This provision is now repealed, but at the time this money was deposited there, it was in full force. It was passed with some *eclat*—with considerable noise, and it was done in order that the people might know what was the condition of the public funds. Let us see whether this money brought by Nelson C. Brock was thus

deposited, or whether it was deposited at all; for I am going to show that the money was simply sitting in the bank, and it was not to be supposed that that constitutes a deposit. The bringing of a carpet-sack of money, and leaving it in the bank, as this was left, does not constitute a deposit. Let us see whether Brock had told a lie,—and he had had excellent training in this direction. He had been closely connected for two years with Governor Butler, and was the custodian of his secrets. He had been instructed to give no information whatever, with regard to the business of his office, to any one who might come "prying around." It is true he had been schooled in lying for two years. McConnell tells us that when Brock left Lincoln to go after the money, he heard him say that he was going to get a big sum of money, and that sum of money would help them to extend their business as private bankers. Then upon his return what was done? Why, he came to Nebraska City; visited the Treasurer of the State at that place, but does not let him know anything about the money being in his possession. He brought it here, and counted it out and then put it in the vault, the amount being short about \$300. About the 25th day of the month, we first find the Governor's foot-prints in this matter. To be sure there were three certificates made out on the 22d, but these were cancelled, and on the 25th we find three other certificates of deposit issued. What certificates of deposit? Were they those that the law requires the Treasurer to make out, so that you and I may go to the Auditor and see the financial condition of this State? No, sir, not at all. What, then, is it? The certificates are before you, and they simply indicate that David Butler, not the Governor, but David Butler, is the depositor. If Brock allows the account of David Butler to be overdrawn, he is sharp enough to put this matter in such shape that he is secure, and he so fixes it that David Butler only can draw this money; so that if David Butler overdraws \$15,000, he can be made to meet this over draft.

It is on the 25th of May that you first bring home the matter to the

respondent, and he brings his own witness upon the stand, who says that when he left the bank on the 23d day of May Governor Butler owed the bank nothing; but when we take up and open before him two or three volumes he is constrained to say that he has stated a falsehood.

Now, gentlemen, here is a bundle of papers; some of them are bonds, and some are mortgages. They are a very unfortunate little pile of papers; they are more unfortunate than the dove sent out by Noah, which failed to find a resting place for the sole of its foot. The foxes have holes, and the birds of the air have nests, but these bonds and mortgages have not where to lay their heads. They have never to this day found a resting place. They cannot say where they belong, nor to whom. We find them in the office of David Butler, then down to Sweet's bank, and again frightening our little Dutch Treasurer. He finds them, like a lurking serpent, coiled up in his office one day, and he wants to get rid of them, and he says to the Governor, "For God's sake, relieve me of these things." But, gentlemen, what do they prove? They prove precisely just what I have shown you. One thing is, that the Governor never intended to make a deposit. The circumstances of giving these certificates of deposit forbid the idea. These were given in the following form: First, those which were cancelled, and subsequently those which were received by the Governor and bear his signature.

"Certificate of Deposit No. 2265—Banking House of James Sweet & Brock, Lincoln, Nebraska, May 22d, 1869.—David Butler, Esq., has deposited in this Banking House five thousand dollars C. F. payable to the order of himself on sixty days notice, on the return of this certificate. James Sweet & Brock. \$5,000."

[The word "cancelled" written across the face of the certificate with a red pencil.]

Also two other certificates of the same date, and for the same amount.

Copy of certificate issued on the cancellation of the above:

"Certificate of Deposit No. 2273—Banking House of James Sweet & Brock, Lincoln, Nebraska, May 25th,

1869.—David Butler, Esq., has deposited in this Banking House five thousand dollars C. F. payable to himself on the return of this certificate with interest at seven per cent. after ninety days.

(Signed),

JAMES SWEET & BROCK.

\$5,000.

Endorsed on the back of the certificate, "David Butler, O. K."

Also two other certificates of the same date, and for the same amount.

It will be seen that they bear dates at almost the exact period of the arrival of Brock at his banking house, are payable to David Butler as an individual and not as Governor; not negotiable, and his direct recognition of the transaction as of that date and for his individual benefit, is finally indicated by his endorsement thereon of his own name, simple David Butler, without affix or adornment. The mortgages moreover, by the Governor's direction, were made to bear the same date, indicating clearly that it was then his intention to appropriate the fund, and not to deposit it; and yet it is contended that he not only intended to deposit it there and then, but that he did so deposit it. Is there any sense in that kind of twaddle, in that sort of nonsense—is this a gullible Senate? They don't think that "soon after" may mean in the history of the world, a thousand years, or in the history of a nation one hundred years. There is nothing to show that these mortgages were made at the time they are dated, and why does he anti-date his mortgages on \$15,000 so that they should draw interest before the loan was effected? Tell us who made that loan? He tells us Sweet, the Treasurer, made it, but it is shown in the evidence of McConnell that Brock saw Sweet at Nebraska City, and left him there at that time, and it is in evidence also that Sweet was not here until long after the 25th, and he states he never knew until some days afterwards that the money was here, and so does Brock, and this agrees with the statement of Brock that he would use the money, and fix his records so that no investigating committee could tell anything about them, and if any loan was made at all it must have been sometime after, and if so,



then, as sensible men, with the bands off your heads, tell me why he dated the mortgages back? By what authority did he borrow the money of the State? by the authority of all the Commissioners, or only one? The Commissioners, in other States, are prohibited from taking the loan of the public money while in office, but provided he could make the loan. Nobody contends that this was any fund that could be touched, as a loan, but that that same money should now rest in the Treasury of the United States, or of the State of Nebraska, and that you gentlemen, now sitting as the General Assembly of the State, jointly with the house, are the proper persons to say what shall be done with that public fund. But where is the State five per cent. fund to-day, gentlemen, on the investment of which you should legislate? "Gone where the woodbine twineth;" gone, I undertake to say, never to return. I had a boy a year and a half ago that I wanted to educate. I brought him here to the State of Nebraska, while she was yet a territory. I was anxious to get her into the Union that we might get the benefit of a free school system, to be kept up by this school money. When they asked how will you make it available, I told them we could get this five per cent. fund, so that it was well understood that this was public money to be had and invested for the benefit of the public school interest. My boy is growing into manhood, and where is that money; the \$17,000, of which he should have the benefit to-day? It is locked up in that beautiful chateau on the hill yonder, where legislators are invited to regale themselves with wine and sumptuous living. Why, without the school-fund, we could not live; and there is no school-fund there. But, to pass to the next specifications. Another error, it seems to me, has crept into the theory of the counsel for the respondent; they have moved heaven and earth, as it were, and brought a witness to impeach everybody else, and before he is on the stand five minutes he impeaches himself. They undertake to show that this money has been deposited, and there they rest. Now, gentlemen, if you will take the

trouble to read specifications 2, 3, and 4 of Art. 1, you will find that, although it may have been deposited there, if it should be made to appear that he took it out and had it under his own custody, subject to his order, and afterwards did mingle it with his own private funds, what does it effect that money was once deposited in the Treasury or in the bank of Sweet & Brock? No matter what the use he has made of the money, if used for any private purpose, then he is within the purview of the charge and he can in no case be held guiltless. This is Specification 2d. "That having said sum of \$16,881.26, under his control and subject to his order, he, the said David Butler, Governor as aforesaid, did, during the month of May, A. D. 1869, corruptly and unlawfully intermingle the same with his own private funds, and use the same for his own personal benefit." Now has not that been fully and abundantly proved? Is it not proved by the admission here, if not, what became of it? Where is it? When this inquiry is made and the Auditor is pressing him for the money, it is then, and not till then, he wanted to secure it. He had loaned it out and could not pay it. It was not shown to whom he loaned it, and it was not necessary to know; and until an indictment is drawn by some efficient attorney it is sufficient to know that he had simply loaned it. What business had he to loan it? He did not have the excuse that he stated on the political stump, that somebody had said that a Governor like him should live in a better residence. The whole thing is explained upon the only hypothesis that Governor Butler had it, and having it, used it, and took the chances. Now let me call your attention to the Specification 3d: "That having said sum of \$16,881.26, under his control and subject to his order, he, the said David Butler, Governor, as aforesaid, did during the month of May, A. D. 1869, unlawfully and corruptly intermingle with his own private funds, and use for his private benefit, a part of said money, to wit: the sum of \$1,881.26." Now is not there a showing of what became of that money outside of the \$15,000, using it for his own private

benefit, and the rest was entered up to the private credit of David Butler and he checked it out soon afterwards. Then the fourth Specification. "That having said sum of \$16 881.26, under his control and subject to his order, he, the said David Butler, Governor, as aforesaid, caused the same to be deposited in the Banking House of James Sweet and Brock, in the city of Lincoln, Nebraska, on the 25th day of May, A. D. 1869, and from thence, from time to time, during the years 1869 and 1870, unlawfully and corruptly draw out, handled, employed and used the same as his own private funds, and for his own private use and benefit."

Well, now, the proof of all that is that it was there deposited, and lay there. The whole was evidence further of three certificates of deposit, and then while he held these certificates drawing seven per cent. interest. It was only foreborne by the grace of the banker when it was returned. He checks the note due himself, not as Governor to himself or bearer even, but to himself, simple David Butler, drawing seven per cent. interest; and while so tied up he then allows himself to go on and draw out in excess of his deposit to a sum more than the amount of these three, and when he had overdrawn to the amount of the \$15,000 or more, because according to McConnell the account was overdrawn there to the full amount and all cancelled afterwards. Now, if there is a man on the face of the earth that can make this appear in any other light than a simple transaction, to take that and use it for his own use and purpose, and not make it a part of public funds; if there is that man, he has an ingenuity that should make him President of the United States, or enable him to fill any place of honor in the gift of the American people. He is a prodigy. He is not in this Senate Chamber. No man is here that can do aught towards showing you the Governor did not determine, at the outset, to take this, and having it to use it, keep it, make the most of it, and when caught at it, to pooh, pooh the whole thing down, and bid defiance to the State; and when what he has been pleased to denominate "the hounds" were after him, then he

comes in here with counsel, and resorts to all the felon's dodges, to the rogue's technicalities; and, in this manner, instead of throwing himself wide open, as a man would who feels a consciousness of innocence—as those have done whose examples are before us in the impeachment trials exhibited here, he endeavors, by these arts, to evade and stifle all inquiry into his official career.

Now, gentlemen, we will pass on to specification four of Article I, the other specification not being relied on, McBird having business to St. Louis and Sioux City, and various other points. And I would not wonder if he popped in here like a small frog after a thunder shower, after this case closes. And so that charge, the most startling and damning perhaps of all the charges made here, for the lack of witnesses, we are unable to substantiate. The party floats about, neither his family nor any one else knowing his whereabouts for the time being. But let us proceed:

SPECIFICATION 4th. That under, and by virtue of an Act of the Legislature of the State of Nebraska, entitled "An Act to lease certain Saline lands to Anson C. Tichenor, Jesse F. Green and others," approved February 15th, 1869; the said David Butler, Governor of the State of Nebraska, at the time hereinafter next mentioned, had authority to lease to any competent party or parties, certain Saline lands belonging to the State of Nebraska. Thereupon to-wit: On the 15th day of July, A. D. 1869, one Thomas F. Hall, a party competent to take and receive a lease of the said lands, did apply to the said David Butler, Governor, as aforesaid, at Lincoln, said State of Nebraska, for a lease of certain of the said Saline lands, in Township ten. (10) north of Range six, (6) East of the sixth Principal Meridian, in the county of Lancaster, in the State of Nebraska; and the said David Butler, Governor, as aforesaid, did, then and there, wilfully and corruptly suggest, propose and offer to the said Thomas F. Hall, that if he, the said David Butler, should receive the sum of five thousand dollars for his own use and benefit, he would, as Governor, as aforesaid, lease the said lands to the said Thomas F. Hall, and did then and

there wilfully and corruptly indicate to the said Thomas F. Hall, and give him to understand, that unless he, the said David Butler, Governor, as aforesaid, should receive the said sum of five thousand dollars, as aforesaid, he would refuse to lease the said lands to him, the said Thomas F. Hall, and because said Thomas F. Hall did decline and refuse to pay or offer to said David Butler, Governor, as aforesaid, any sum of money or consideration therefor, to the said David Butler, Governor, as aforesaid, did wilfully and corruptly decline and refuse to lease the said Saline lands to the said Hall, contrary to his duty and his oath of office as Governor; and whereby David Butler, Governor of the State of Nebraska, did commit, and was guilty of a misdemeanor in office.

Now, there is a pleasant little chapter connected with this matter. I think that I can state what the act is in regard to the Saline lands. It is an act which provides that paying a certain sum called the royalty, the Governor is authorized to convey all leases to parties who will go on and build and open up the salt business. Now, this allegation shows that T. F. Hall and another came and made application for a given tract, expecting to pay the royalty and stating to the Governor he was so willing. The Governor said it was too great, and he went home to apply to the Legislature to have it reduced. What is the royalty? It is a certain sum fixed to be paid on the lease annually; a certain per centage, I think. Something growing out of the business, perhaps. Well, now, what is the negotiations between them. The Governor says to him that he will let him have it, and he estimates its worth at \$5,000. I think he told him he could not have that tract but he could have another near by. The question was asked whether that sum went to the Governor or the State, and the witness, I think, said he did not know. When the proposition was made to Butler to take money for that which he had no right to take, he said the royalty was too high, but supposing the royalty was not he was to give it to his partners or anybody not public authority. This, we say, is contrary to good morals, contrary to

decency, and contrary to good example, to suggest to a man that he give a bonus for that to which he is entitled under the law; or it is contrary to good morals, contrary to decency, and contrary to good example to go as Brock did and propose to give him something. It seems that Hall and his friend wanted one particular tract, which appears to have been a desirable one. And when he said what he would be willing to give he did not understand then what was the usual highway to the favor and affection of His Excellency. He was not expecting anything like fraud and corruption, and so he stops that negotiation and he finds another particular tract and he desires that. Now he receives this letter from the Governor to this claim.

Now, it is shown in this evidence somewhere, in one or other of the letters, or by the witness, that this particular tract was one claimed to have been leased by Cahn & Evans—a desirable tract. Now, this furnishes the key by which we can, to some extent, unlock this problem. We can get at the reason why Hall could not have this particular tract. It seems that in an interview the Governor had with John Gillespie during the session of the Legislature, reference was had to a recommendation in His Excellency's message, to Cahn & Evans tract, that an additional appropriation be made, you know, to develop our resources, to encourage capitalists, and to show to the world that we have any quantity of salt. Now, it seems he had a conversation with John Gillespie, and what was it? The Governor said: "Don't oppose my recommendation in that message; let them go on and make the appropriation, as I recommend, because I have an interest, and I am thirty thousand out, and this will help me out, make it up to me, and you are to be in it." And the thing is all fixed. That shows the milk in the cocoa nut; it shows that this particular tract, which nominally belonged to Cahn & Evans, in reality belonged to David Butler, who wanted this liberal appropriation for developing the resources of the country; and then he says to John Gillespie, "I know you are out a little, and I am out thirty thousand." I'm in it

and you shall be in it; now don't oppose my message to the Legislature." It was a thing in which the Governor himself was interested; therefore, while he would not give away to Hall this good thing in which he had an interest, he would push him along a little further to some other piece of land. To enable Hall to realize his desires, however, it was necessary that he should grease the Governor up a little, that he should need the position of his digits held suggestively behind. Then we come to specification five: "That the said David Butler, Governor of the State of Nebraska, being by virtue of his office the President, and a member of the Board of Regents, known as The Regents of the University of Nebraska, and the said Board of Regents having power and authority to appoint a Treasurer of the said Board, said David Butler, Governor, and President and member of the Board of Regents, as aforesaid, heretofore to wit: On the first day of January, A. D. 1871, at Lincoln, in the State of Nebraska, did wilfully and corruptly promise to, and agree with one Nelson C. Brock that he, the said David Butler, would endeavor to procure the appointment of the said Nelson C. Brock as Treasurer of the said Board of Regents, and would use his vote and influence as a member, and as President of the said Board, for the purpose of securing, and with a view and to the end of procuring such appointment, for a consideration, in money, to wit: the sum of seven hundred and fifty dollars, to be paid by said Brock to him, said David Butler, in case the said David Butler should so secure such appointment, contrary to his duty and oath of office, and whereby said David Butler, Governor of the State of Nebraska, then and there committed, and was guilty of a misdemeanor in office." Now, then, what are the facts in this case. When it was asked by the counsel for the respondent, to Brock, whether the Governor resented it, did you notice that very significant smile upon the face of the witness. It was very significant. There was a whole volume almost in the wag of the head and the smile that played upon that youthful countenance? It seemed to say, "Why, sir, I knew my

man; I knew him from the crown of the head to the sole of his feet; I have eaten and drank with him; I had learned to tell lies of him; I had slept with him and I know him all over; I knew he did not want a better thing than to have \$700 offered him;" and he said "No." Simply did not rebuke him. Now, reflect that Nelson C. Brock is a boy 23 years old; that he came to David Butler, and offered him base coin to prostitute the functions of his office on his behalf; and the Governor neither split in his face nor bid him leave his presence. The Governor, a middle-aged man, did not kick him out of his presence. Put it upon that ground and it alone is an offence that should impeach him to all intents and purposes. That Brock should not be spurned from his presence; or if he had not, if he was worth saving why did not that man say quietly to him, "why, my young friend, do you know what you are doing, the base offense you are committing, to approach a public officer and offer him money?" Oh! what a grand opportunity to say something for that young man's benefit. Would not that rebuke have been a good moral lesson that would have rounded to the credit of a public functionary. I undertake to say that if there was no other article or specification in the whole line, that alone should impeach David Butler for misdemeanor in office. The same remarks apply to the 6th specification. Now we come to Article 3d, which reads as follows:

"That, on the 18th day of February, A. D. 1869, one Champion S. Chase, Esq., was, and for sometime then last past, had been an Attorney for the State of Nebraska, retained and employed by the Governor of said State, and had, as such Attorney, rendered certain services for the said State, and it was the duty of the said David Butler, Governor of the State of Nebraska, under, and by virtue of the law thereof, to determine what compensation for such services was fair and just, and according to what was paid in similar cases. And thereupon, to wit: On the 18th day of February, A. D. 1869, the said David Butler, Governor, as aforesaid, did wilfully, falsely, and corruptly determine and represent to John Gillespie, then the

Auditor of said State of Nebraska, that he, the said David Butler, Governor as aforesaid, deemed the sum of two thousand dollars to be a just and fair compensation for the services so rendered by the said Champion S. Chase, Attorney as aforesaid, and did wilfully, corruptly, and unlawfully, induce and cause the said Auditor to issue two certain warrants upon the Treasurer of said State of Nebraska, for the sum of one thousand dollars each, under the pretence that the same were issued for the services of said Chase, as such Attorney; he, the said David Butler, Governor as aforesaid, then, well knowing that said sum of two thousand dollars was a much larger sum than was fair or just for such services, or was paid for similar services; and not intended that the whole thereof should be paid to the said Chase, but corruptly intending to appropriate one of the said warrants to his own use, and thereupon, to-wit: On the 22d day of February, A. D. 1869, the said David Butler, Governor, as aforesaid, did wilfully and corruptly appropriate to his own use, one of the said warrants, and upon, and by virtue of the same, did draw and receive from James Sweet, the Treasurer of the State of Nebraska, the sum of one thousand dollars, which he then and there appropriated to his own use and benefit contrary to his duty and his oath of office, whereby the said David Butler, Governor of the State of Nebraska, then and there committed, and was guilty of a misdemeanor in office."

May it please the honorable Senate, I don't know what answer can be trumped up for the charge in this article. This is the answer of the respondent to the third article:

"That it is true that for the time therein stated, Champion S. Chase had been the Attorney for the State of Nebraska, and as such Attorney, had rendered certain services for said State, and it was the duty of this respondent to determine what compensation for such services was fair and just, and according to what was paid in similar cases, but this respondent distinctly denies that he did, at the date therein stated, or at any other time wilfully, falsely and corruptly

determine and represent to the Auditor of said State, that he, this respondent, deemed the sum of \$2,000 to be a just and fair compensation for said services, and denies that he wilfully, corruptly and unlawfully induced said Auditor to issue two certain warrants for the sum of \$1,000 each, under the pretense that the same were issued for the services of said Chase, as in said articles charged and set forth.

But at the date of the issuing of the two warrants aforesaid the State was indebted to said Chase in the sum of about \$1,500, and said Chase was still in the employ and service of said State, and this respondent, then and there believed, would continue as such Attorney; and after the issuing of said two warrants, this respondent went to said Chase and delivered to him one of said warrants, then and there stating to said Chase that he would be in need of some money with which to enter for the State certain saline lands, no money having been appropriated for that purpose, and that if he, said Chase, would not object, he would retain the other warrant until this respondent returned from Washington, whither he was then bound—to which said Chase gave his consent; and this respondent further represents, that upon his return from Washington, this respondent determined to appoint Seth Robinson in the place of said Chase, and thereby end and determine the services of said Chase; and to that end settled with said Chase up to that date, and afterwards caused a warrant to be issued to said Chase for the amount found due him, having previously, but after the appointment of said Robinson, paid the money received on one of said warrants into the State Treasury, and caused the same to be cancelled, having entered the saline lands with an unexpended balance of money, appropriated for that purpose in 1867, but of the existence of which this respondent was not previously aware."

I have failed to discover where the excuse for taking this money is. The defendant, by his answer says, it is not true that he committed a misdemeanor in office, and yet it is true that he took that two thousand dollars out of the State Treasury. It seems that the law was

passed fixing the salary of the Attorney General, and it was stated by Colonel Chase that he left the matter of getting the money due him from the State with the Governor, who was to secure the amount due him, and send or bring it to Omaha. How is this act explained? Is this another little "eccentricity?" The Governor was about going to Nebraska City, and he takes these warrants along, and they are paid by Sweet. After this he calls on Chase in Omaha, and in conversation with him says, "Here's one thousand dollars of the money due you from the State. I would like to use the balance;" but he don't tell what the balance is. After using that one thousand dollars one whole year, he returns it to the State Treasury, and Sweet marks it "conscience money;" and he says himself, in a portion of this third answer, that at the date of the issue of the warrants, the State was indebted to Chase about \$1,500. Only \$1,500! Why, then, did he take \$2,000? Why, because he could. Here, in their third answer, there is an admission of there being at least \$500 drawn from the Treasury for Chase, more than the amount due him, and according to the statement of Chase it was more than that. The fact is, that the Governor was drawing Chase's salary in advance. There was \$1,500 due Chase, and Butler drew \$2,000 as his salary, and claims, in his answer, that Chase was still in the employ of the State. What right had Butler to draw any part of Chase's salary in advance? Why, if you say he had a right in this case, you cannot deny him the same right in the case of other officers. He would be at perfect liberty, for instance, to draw the entire amount of pay due the Supreme Judges of the State, even up to the time of the expiration of their term of office. What business had Butler with the \$500? What business had he to take this money and use it?

Articles 4 and 5 may be considered together. I read Article 4:

"That the said David Butler, so being Governor, as aforesaid, in the year A. D. 1869, being, by virtue of his office, one of the Commissioners provided for by "An Act to provide for the sale of the rentals, lots and blocks on the town site of Lincoln,

and for the location and erection of a State University and Agricultural College and State Lunatic Asylum, approved "February 15, 1869, to locate a site for a State Lunatic Asylum, and to direct the expenditure of the sums named in said act in the building a State Lunatic Asylum, did unlawfully and corruptly enter into contract with one Joseph Ward for the completion of the said Lunatic Asylum, at a contract price greatly to-wit: Eighty-eight thousand dollars in excess of the sum appropriated for said buildings. That he, the said Governor, well knew at the time that said Ward was entirely irresponsible and unable to give the bonds required by law, that he had no qualifications nor capacity as a builder, that by the terms of said contract the foundation of said Asylum was to be completed for eighteen thousand and five hundred dollars, and that in the spring of 1870, said foundation was not finished, and there was due to said Ward less than that sum upon said contract. Yet the Governor, well knowing the premises, approved the estimates of said Ward, and caused the same to be allowed and paid to the amount of forty-five thousand dollars. Whereby he, the said David Butler, Governor as aforesaid, did then and there commit, and was guilty of, a misdemeanor in his office."

Now, there are two charges here. One, that he overdraw estimates, and another, that he made the contract with an irresponsible individual. It was distinctly stated in the testimony here that the man Ward was not worth a dollar. It was stated by Kennard, and also by Mr. Gillespie, that at the same time these estimates were overdrawn, the Governor and Secretary were both constructing residences; but apart from that, we find that in the case of the Silver contract, as well as in the Ward contract, the appropriations were overdrawn, although section 1 of Finance Article of the Constitution distinctly provides that the appropriations should not be exceeded. But it is said in defense of this that there has been a committee appointed by the Legislature to investigate this business, and this action of the Governor's was endorsed by that committee. I

know that this was the case, and that this committee made report that, so far as they were concerned, this transaction was satisfactory to them. But you have seen since you have been here how exceeding difficult it is to get together the evidence so as to know what it is; and so that cannot bind you, and now let me state in general remarks: It was stated that the Governor was "whitewashed" just before the election, and by virtue of that whitewashing process he slips into office the second time, was re-elected, and therefore you cannot inquire into the acts of his former term. I thought when Mr. Marquette made this argument, that that whitewashing was endorsement No. 1, and the re-election was endorsement No. 2. I then went immediately to my room and spent a whole night in examining Chitty and Story on bills and notes, in order to find out what would be your liability, if you should now, by your action, become his third endorsers. Let him again go into the Governor's chair, and let another \$17,000 come into the State Treasury, and under his control, he would again use it, and would be a fool if he did not. And if any one should question the propriety of it, he would say, "sir, my action has been endorsed by three good endorsers." I pity the school fund, and God help the Commonwealth, if this shall be the result of this impeachment trial.

ARTICLE VI. That, at the present session of this Legislature, in the month of January last, the House of Representatives, of the State of Nebraska, passed a resolution in the words, and to the effect following to-wit:

"Resolved, that the Governor is hereby requested to communicate to this House, at the earliest moment, the name of the agent appointed by authority of an act of the Legislature, to collect from the United States, the five per cent. upon the sales of public lands set apart for school purposes, prior to the admission of the State. The amount so accrued and due to the State, and the amount collected and paid into the State Treasury. Also the amount paid to said State agent for his services."

And thereupon the said resolution was duly communicated to the said

David Butler, Governor of the State of Nebraska, and in response thereto the said Governor, on the 25th day of January, A. D. 1871, sent and transmitted to the said House of Representatives, a communication, in the words and to the effect following to-wit:

"To the Honorable the Speaker of the House of Representatives:

In response to a resolution passed by the Honorable House of Representatives, relative to the collection of the five per cent. funds, I submit the following report: Amount accrued and due the State, January 1st, 1869, \$16,881.26. While in Washington, in the spring of 1869, I secured the auditing and payment of this claim, and deposited the above amount in the State Treasury. No fee or commission was paid any agent for its collection.

(Signed), DAVID BUTLER."

That was one of the most extraordinary little messages that ever I knew to be sent to a Legislative body. There would seem to be some doubt of what had become of that money. It became a subject of anxious, but very legitimate inquiry. Here is one branch of the Legislature of the State seeking information upon a very important subject, at the hands of the Executive branch of the government. He knew it all, and it would seem that the executive officer who knew what his duties were, and meant to perform them properly, would have made the explanation, not only what was done with, but what was the condition of the five per cent. fund; but instead of so doing, he abruptly, impudently, and audaciously exhibits to them—as the boys of Omaha say—the cheek of a government mule; and simply says, "I deposited it in the State Treasury; help yourselves if you can." Now comes a very interesting little episode in this transaction. Some curious fellow—and there always are such, trying to find the "whys and wherefores;" "hounds," the Governor would call them, on the track of official delinquents—not quite satisfied with this matter, turns to the Auditor's books; but he does not find any entry of the five per cent. fund there, and the inquiry is made, Why is there no entry there? It was never reported. Why

not? It was never in the Treasury. Why? The answer comes, "Because Governor Butler never put it there." That is the reason of this gubernatorial falsehood.

We have proven that this statement was a positive falsehood, and known to be; and if we had nothing further to prove it, here is evidence, (holding up the mortgages of the respondent.) I have something to say about these, but I will let them be for the present.

Them comes specification 1st, article 7:

"He, the said David Butler, Governor, as aforesaid, did, on or about the 30th day of July, A. D. 1870, instruct James Sweet, State Treasurer, he being then and there the custodian of said School funds, to let one Anson C. Tichenor, have \$10,000 of said school money, and he, the said David Butler, Governor, as aforesaid, would approve the security therefor. That said sum was loaned to said Tichenor without the assent of either the State Auditor or Treasurer. That the security taken therefor was, and by him, the said Governor, was at the time known to be wholly inadequate and insufficient."

Now, then, it is shown that the offense has been committed here beyond all peradventure, because the law of '67, I think it is, says that the school funds must be invested in undoubted security, and the bonds and mortgages must be written across the face in red ink, "Investment of school fund." And it is the duty of certain commissioners to see that it is so invested. That law is amended so that it can be invested in good State or United States securities, or other good and sufficient securities. Now, then, I undertake to say that the Governor has no right to loan this money, and when he did so he committed an impeachable offense. Can it be supposed for one single instant that he was ignorant of the constitution and laws of the State, which lay on the shelves of the State Library, where he had daily access? And where it is stated that no commissioner can loan to himself, and that \$500 shall be the maximum sum loaned to any one individual, "whose title had been derived from an administrator's or sheriff's sale. No land shall be taken only by the proper law

officer, and whose price," &c.; "and no land shall be taken at any price less than one-half," &c. Can it be supposed that the power to loan was intended to be given as a matter of law? It is not there. And I hope, before you leave this capitol, you will authorize suits to be instituted against Sweet, if you please, and any man who has presumed to lay his unhallowed fingers at all, upon the school fund, with a view to recover it again. But pass that over. If it was a subject proper to be acted upon this way; if this money was proper to be loaned, who shall loan it? It says the Commissioners form a board for this purpose, and shall have the authority to loan. What is the law in regard to the action of a Board of Commissioners? The law is, that they have no authority, one at a time, as you may chance to meet them on the street. But it must be a consultation of the whole of the members together, and a majority must agree; and then it shall be the action of the board; and not until then is the power given to make the loan. What are the facts in this case? I will only call your attention to the fact that the Attorney General himself stated to the Governor that he deemed it "shaky." And still upon a shaky purpose like that, a thing so shaky as that the Governor writes this letter to Brock and says, "let me have \$10,000, and I'll will approve the security," he takes the responsibility of it, and there was no other person consulted except the Auditor, and he says he did what he did in regard to it by the importunities of Tichenor, because he knew the conditions could not be complied with, and they never were. So it was the sole act of David Butler to make the loan and approve the securities. If that is the kind of thing to be transacted, the sooner you stop it the better. Whatever power you have conferred upon the Governor, when you come to examine into the manner of its performance, you see all the while and everywhere, through this the most total, utter, positive disregard to the laws of the State and many of the provisions in the "Article on Finance."

Now, let us look at article 9, in relation to the issuing of patents to the



Sioux City & Pacific Railroad. It is now twelve o'clock, and if the Senate will indulge me after dinner—

Senator THOMAS. I move that the Senate, sitting as a Court of Impeachment, adjourn until two P. M.

The Senate then adjourned.

#### Afternoon Session.

Senate met at two o'clock.

The Clerk called the roll, and all the Senators answered to their names.

The PRESIDENT. The counsel for the Managers will proceed with his argument.

Mr. ESTABROOK. Gentlemen of the Senate:—When Sir Walter Scott was asked why he did not write "The Life of Napoleon" in two volumes instead of three, he said it was because he had not time. If I had had time, perhaps, I would have digested what I have to say, and submitted it more compactly. As it is, I am compelled to be a little more desultory than I myself desire. When the Senate adjourned, I was about to consider Article 9, which runs thus:

"ARTICLE IX. — That said David Butler, Governor of the State of Nebraska, in the year 1870, but at what particular time is unknown, at Lincoln, in the State of Nebraska, regardless of his duty, and his oath of office, did improperly, partially, wilfully and unlawfully execute and cause to be issued and delivered to the Sioux City and Pacific Railroad Company, a patent or patents of the State of Nebraska, of and for a large quantity of the public lands belonging to the State of Nebraska, to wit: Seventy-five sections thereof, situate in the counties of Dodge, Burt, and Cumming, and being the same lands granted or secured by an Act of the Legislature of this State, to the Northern Nebraska Air-Line Railroad Company; whereby the said David Butler, Governor of the State of Nebraska, then and there committed, and was guilty of a misdemeanor in office."

[Several Senators left the Chamber at this point, and

Manager PORTER suggested they be sent for; but

The PRESIDENT said the journal showed a quorum present.]

Mr. ESTABROOK resumed—Now,

the facts contained in this charge relate to the rights claimed to have been secured by some gentlemen who live over in the State of Iowa, and have constructed a railroad to the Missouri river, opposite Blair, thence across the river into Dodge county. By virtue of certain proceedings claimed to have been had with what was called the Nebraska Air Line road, chartered in 1867, which, it was claimed, had been consolidated and swallowed up by the Sioux City and Pacific Railroad. The testimony on the subject has been given by Jesse Davis and the Auditor. The Auditor, who was one of the Board whose duty it was to make conveyance of the lands whenever the conditions had been complied with, states that Blair and others, representing the Sioux City and Pacific Railroad, came to Lincoln and there preferred their claim to these lands; that the matter was discussed *pro and con*; and that the question of the legality of the transaction was a subject for consideration, and was a matter of extreme doubt, to say the least; and, finally, the Governor agreed that he would not give the lands until he had again seen the Auditor; would not make conveyance of the land that had been selected, a lease of which was expected. But, directly afterwards, the Auditor learned he had made the conveyance; but the Auditor said he had not made a conveyance of the same lands. It seems the Governor is unfortunate. Every time he opens his mouth he makes some gubernatorial mistake. This is all a mistake, it is claimed, by counsel. He said he would not make the conveyance, but, it appears, afterwards he did. There was, at least, the breach of good faith, but that is not the substance of the articles of impeachment. It is "that he made it recklessly and without authority of law." He made it without using the proper care of seeing whether the parties were indeed entitled to it; and in the examination of these lots, I undertake to say that a tyro in law, a man who had slept one night in a lawyer's office, by reading over the provisions of law upon this subject, could not fail to come to the conclusion that the Sioux City & Pacific Railroad had no further right to these lands than

you or I as individuals. That it was, from beginning to end, a put up job on the part of Blair and his friends to come here, perhaps not to subsidize the commissioners—perhaps the Governor did not get sweetened or salted in the transaction—and secure those patents; and David Butler, in the face of the illegality of the transaction, did it without the law on which to rest. I will read the Act giving power to donate these lands. It is from the Special Laws of 1867, page 133:

#### AN ACT.

To donate seventy-five sections of the public lands of the State to the Northern Nebraska Air-Line Railroad Company.

SEC. 1. *Be it enacted by the Legislature of the State of Nebraska:* That seventy-five sections of the public lands, granted and donated to this State by the United States for the purposes of internal improvements, as provided in the eighth section of the Act of Congress of the 4th day of September, 1841, be and the same is hereby appropriated and donated to the Northern Nebraska Air-Line Railroad Company, for the purpose of aiding in the construction of the road of said Company, which said railroad is to commence at De Soto, in Washington county, and terminate at Fremont, in Dodge county.

SEC. 2. As soon as the public land aforesaid shall be selected by the State, the Governor, Secretary of State, and Auditor, shall select and set apart for the use of said Railroad Company seventy-five sections of said land, as aforesaid, which selections shall be in quantities of not less than one-half section.

SEC. 3. After the lands shall have been selected as aforesaid, the same shall not be otherwise disposed of than is provided for in this Act.

SEC. 4. Whenever a section of ten miles shall be completed on said railroad, the said company shall be entitled to receive from the State patents for twenty sections of land selected as aforesaid; and on the completion of each subsequent section of ten miles, patents shall be issued to said Company for a like quantity of land selected as aforesaid, and on completion of the said road, patents shall be

issued for the remainder of the seventy-five sections of land not then patented as aforesaid.

SEC. 5. The said road shall be commenced within three years and be completed within seven years from passage of this act, otherwise this grant to be void. And this grant is made upon the condition that the said company shall never charge nor receive any sum whatever for any freight transported over said road for this State. And if this grant is accepted by the said company it shall be with the condition hereinafter expressed and limited.

SEC. 6. The act may be amended or repealed at any future session of the Legislature held previous to the delivery of the lands to said railroad company.

SEC. 7. This Act to take effect from the day of its passage.

Approved, June 20, 1867.

The respondent's counsel raised the question as to whether that act was admissible.

Mr. ESTABROOK. If this was not referred to in the proclamation, of course it is totally and thoroughly void. Now, then, that provides for the conveyance of land to certain railroad companies. To be sure it is made before we have got a title to the lands. I will not argue that point, but I think sufficient has been said to show you, gentlemen, that these lands were conveyed to that railroad company. Now Jesse T. Davis comes in, and says he was present at the time this conveyance was made. It will be remembered that he exhibited a plat of this road. From the exhibition made in the plat, it is made clear to you that the road to which this grant of land was made, had absorbed and swallowed up the road to which the grant was originally made; that the Sioux City and Pacific had swallowed up the Northern Nebraska Air-Line Railroad. It is claimed that under and by the authority of Section 89, page 220, of the Revised Statutes, this consolidation was effected. "Whenever the lines of railroad of any railroad companies in this Territory, or any portion of such lines, have been or may be constructed, so as to admit the passage of burden or passenger cars over any two or more such roads

continuously, without break of gauge or interruption, such companies are hereby authorized to consolidate themselves into a single corporation, in the manner following, etc." It was shown by the testimony of Davis that not a single one of the Directors of the Sioux City and Pacific Railroad reside in Nebraska. It was patent that they all reside without the State; but saying nothing about that, here we find two lines of contemplated road over the same route; that one of them was swallowed up by the other, which succeeds to all its rights. But the law says that it is after the roads are constructed, and run in the same direction, without break of gauge, that they may be consolidated. For instance, this road running to Fremont might be consolidated with a road running from that point to Lincoln. When a consolidation is effected, it must be of two lines that run continuously, both being constructed at the time. The object of the law is to aid in the construction of roads into the interior. If the State is giving its lands to a road simply to enable it to be sold out, I undertake to say that this was never contemplated by the law; and in this we say that the Governor has been guilty of a misdemeanor, and when he gave to this road seventy-five sections of land he took away from other roads, lands which should have gone to them. We say this was a palpable misdemeanor in office, and here let me say that if the State should see fit to institute legal proceedings, every acre of that land can be again brought into the possession of the State of Nebraska.

Now, then, I will pass along to article 11. Article 10 relates to a man who at that time lived, and now lives, in Ohio, and we are unable to get him here, and so pass over that article.

"That said David Butler, Governor of the State of Nebraska, by an Act of the Legislature of the State of Nebraska, entitled 'An Act to provide for the sale of the unsold lots and blocks in the town site of Lincoln, and for the location and erection of a State University and Agricultural College, and State Lunatic Asylum,' approved February 15th, 1869, was made a Commissioner, in conjunction with the Secretary of State and Auditor, to

sell the unsold lots and blocks in the town site of Lincoln. That said David Butler, Governor as aforesaid, in the discharge of the duties of such Commissioner, between the 15th day of February, A. D. 1869, and the time of exhibiting these articles, was guilty of corrupt practices and misdemeanors in his said office of Governor.

**SPECIFICATION 1ST.** The said David Butler, Governor as aforesaid, did, in the month of April, 1870, sell to one Andrew J. Cropsey, lots seven, eight, nine, ten, eleven, and twelve, in block one hundred and fifty-one, in Lincoln, Nebraska, the title to which said lots, at the time of such sale, was in the State of Nebraska, at private sale, causing the title deeds therefor to be executed in the name of the State, for the sum of two thousand four hundred dollars, a portion of which said purchase money, he, the said David Butler, appropriated to his own use and benefit; whereby the said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of, a misdemeanor in office."

There has been a good deal of testimony given regarding the way in which the Lincoln lots were sold. Now, how was it in the case of these lots in particular? The Commissioners and the auctioneer were in a carriage, and they drive away from the crowd. The Governor being in the carriage, inquired what the last block sold brought, and was told "about \$2,000." He says, "I will give that for this." Kennard replied that, so far as he was concerned, he might have it, and then the auctioneer arose and enacted the farce of repeating "two thousand" once or twice, and declaring David Butler the highest bidder. Now, you are here, not to deal with fiction, but with facts; and to say that these lots were bid off in good faith is absurd. It is absurd to say that it was not intended to let Governor Butler have those lots, at just what he chose to give, and it is also absurd to say that as a matter of law they were sold at auction at all. It is said by Mr. Kennard here, that Butler bid off ten or fifteen thousand dollars' worth of property. Mr.

Kennard is, perhaps, with the exception of the Speaker of the House of Representatives, the sharpest witness I ever saw upon the witness stand. Kennard tells us about how much the Governor bid off. Let us see *how* he bid lots off. Mr. Kennard stated that the Governor was always a heavy purchaser. *How* did he purchase? Why, he simply bid lots off without paying a cent. He could afford to be a "heavy purchaser" under these circumstances, and the Governor had a peculiar way of conveying title when he sold these lots to other parties. All that was necessary to be done was to take a little piece of rubber, erase one name and substitute another. Yesterday they were the Governor's, and to-day they belong to some one else, and the transfer has been made by means of a little piece of rubber. Colonel Cropsey finally wants to buy the block in question. He is told that part of it belongs to Gillespie, but is told by that gentleman that he does not own the lots in question. Then Cropsey goes to Governor Butler, who tells him he owns the block, and as the Governor is kind, he sells the block for \$2,400. Now, if he puts this money in the State Treasury, he has done a good thing; but he says, "Cropsey has paid me \$2,400; I will put \$900 of it in the State Treasury, and the remainder I will put in my trousers' pocket." Yet we are told by the counsel for respondent that the people should turn out and give Governor Butler an ovation, on account of the great work he has done for the State. But to my mind, to use the words of Pollock, he "puts a penny in the urn of poverty, and takes a shilling out." I have heard so much about the glorious deeds of Butler, and of the great things he has done for Nebraska, that I have almost learned them by heart, and if Redick will put the matter in poetry, we will sing it at the next election.

There were others concerned with him, I know, but they are not upon trial here. We are told that he put money into the State Treasury, by his efforts here; but so long as it is shown that he only puts a penny in, while he takes a shilling out, I think they had better sing another song. He had no

more right to do certain things here than I had. If you will turn to the law authorizing the removal of the Capital, you will find that the town lots in Lincoln, appropriated for the erection of the public buildings, could only be put up and sold at public auction to the highest bidder, thus giving every one an equal chance, and, when paid for, the title to be made out to the purchaser; but if not paid for, it comes back and is put up again for sale. But instead of doing that, they use all these lands as their own, and when a man wants to get a lot on which to build a home, and improve the city, if he will pay them what they want, so that they can make a handsome bonus, all right—the State, all the while, taking the little residuum, and the Governor taking the pile. The following is the law authorizing the sale of lots in Lincoln. Sec. 5 and 6, page 859, of Revised Statutes of Nebraska, 1867:

SEC. 5. The said Commissioners shall then advertise in six newspapers published within the State, that they will, upon a day to be therein named, and not less than ten nor more than thirty days after the date of the notice, offer or cause to be offered for sale to the highest and best bidder, at public sale, each lot in the alternate blocks, not reserved as aforesaid, within said "Lincoln." Said sale shall be held first at said Lincoln, and shall be opened from day to day at 10 o'clock A. M., and kept open at least for five successive days. After the expiration of five days or more, if announced for one day previous to the close of the sale, it shall be adjourned to be opened five days thereafter at the court house in Nebraska City, and shall be held there upon five consecutive days; and the said sale shall then be adjourned to be opened for five consecutive days thereafter at the City of Omaha. If deemed expedient by the Commissioners, or a majority of them, they may, after the adjournment of the sale at Omaha, open such public sale in the cities of Plattsmouth and Brownville, or such other place or places within or without the State as they may see proper, after giving due public notice thereof. And at said sales no lot shall be sold for any

sum less than the minimum price marked upon the plat above provided for, nor upon any other terms than for cash in hand.

SEC. 6. Every purchaser of lots shall deposit the purchase money therefor with the Commissioners, who shall give a receipt for said money, which receipt shall specify the amount of money and the number of the lot and block for which the money was paid, and which receipt, upon its presentation to the Secretary of State, shall entitle the person named therein to a title in fee simple, absolute from the State of Nebraska, to the real estate named in the receipt, which conveyance shall be executed by the Governor and attested by the Secretary of State, who shall file and safely keep all receipts thus presented.

Now, then, there is a subsequent act which says the lots shall be sold in the way provided in that section, except that they shall not go away from Lincoln to make the sales. Now then, you will see that the purchase of block 151 was not according to that law, and that the sale by Governor Butler to Colonel Cropsey is not good; and if I was going to give him a little bit of advice, and I'll not charge him anything for it, I would say to him that he had better see to it that his title is secured. I have passed over the different charges and the evidence in support of them rapidly, I think, although quite long, and now, gentlemen, you will permit me to return for a short time to those vagabond papers, that have not where to lay their head (mortgages). It is affirmed that these are given in security for this money; and they have brought up some witnesses to prove their value, as a sufficient security, some of them ministers of the gospel who perhaps have preached in the neighborhood, or in their circuit rode by the lands. Gentlemen, I believe you have had a little bill before you about the Penitentiary lands. Good selected lands, which have been held for sale at \$5.00 per acre, and could not be sold for that. I think there was a petition asking that it be reduced, and didn't you go to work and pass a law reducing it, and ain't it a fact that none of it has been sold even at that? Why, talk about lands in Pawnee county selling

for \$10 and \$12 per acre, and it is stated that one piece, No. 10, is worth \$100 per acre to secure money loaned. I have tried to say nothing but what was pertinent to the case. I have no eloquence to display. I desired only to direct your attention to the law and the facts, and if I have done so my object is accomplished. And now let me suggest in conclusion, the people of the State have their eyes upon us, anxiously looking for the result of this trial. Letters are being written and articles printed in the papers, freely discussing every step in the progress of this trial, some denouncing it a farce, and even to find fault with me for the part I have taken.

And, now I have done. In a few moments, and so far as I am concerned, the respondent will be in your hands. If he is innocent, send him back to the bosom of his family and friends purged of the suspicions which his revilers have heaped upon him. Return him to the guardianship of the children's sacred patrimony. Let him again sit in the chair of state where his manifold virtues and excellencies may be even more conspicuous than heretofore, and where the rising generations of Nebraska may be stimulated by his example, to be good and honest so that they may some day be great like David Butler. But if he is guilty, by every consideration that moves men to deeds of patriotism; by every consideration of regard for the interests of the State or the constituency which sent you here; by every consideration of the well being of the generations of children of Nebraska, whose patrimony has been filched and squandered, and as you value a clear conscience and the favor of almighty justice, let not the blistering words, "not guilty," pass your lips. Send not David Butler back to his evil practices. I have done.

The PRESIDENT. The counsel for the respondent will now proceed.

ARGUMENT OF MR. REDICK.

MR. PRESIDENT AND SENATORS:

I am so constituted that I cannot speak as loud as my old friend who

has just taken his seat, and for that reason I would be glad if order could be kept while I address you. Permit me to say, Senators, that there is something about this impeachment case, that is not presented in either of the others. In the Beck, in the Chase, in the Warren Hastings, in the Johnson, and even in the celebrated Hubbell case, it nowhere appears that the first investigation originated in the Senate. Here, in this case, if I am correctly informed, the first resolution introduced, in regard to the investigation of David Butler as Governor, originated in this Senate, and resulted in a committee being appointed, three from the House and two from the Senate, to take the testimony. So, now, we have the Senate, who originated the investigation against David Butler, trying him, and two of that body were upon the investigating committee, and one of them, a large, able-bodied man riding bareback upon a pony up and down the country hunting up testimony to sustain the charge. There is nothing wrong about that perhaps, but I want to show the position the Governor occupies to-day. The learned counsel that is to follow me, I want him, if he will be kind enough to point me the case that contains a proceeding of this novel kind, and then I will surrender. It is like a grand jury going into their rooms in the defendant's absence and with his mouth closed, finding an indictment against him, and then going to the court below and working themselves upon the petit jury, in order to try and convict him. Is it not a shame? Is it a fair way to treat any man; to try any man, whatever his crime may be? That is one peculiar feature in this case. Now, let us look around, because there are numerous strangers in this hall, and it will be well for us to ask ourselves who this man, Butler, is. Is he a man from the other side of the water, who has worked himself into office, and who is trying to cheat this noble, big-hearted, 7x½ headed Estabrook's children out of the school fund? Is he a man who has come in here from a foreign State and worked his way in politics until he has reached the highest office in the gift of the State? No, you know better. Six or

seven years ago, David Butler was a lawyer, and part of the time a plain, unassuming man, and living in the usual and quiet attitude of a merchant in little Pawnee town; and after living there a few years his conduct indicated force of character and enterprise unprecedented, and the people of Nebraska thought there was a noble heart under that coat worn by David Butler; that there was energy, integrity and marked ability; and his acquaintance became so extended with the people that the name of David Butler became a household word, and by and by they looked around for a man they could trust as their standard-bearer, for the high office, the first Governor for this young and beautiful State, and who was selected? Who was the man they chose? Why, down there, in Pawnee County, was this man David Butler, and he was elected the Governor of this State without his own figuring at all. He was triumphantly elected against all opposition. At the end of that term the people said "well done, good and faithful servant," we will elect you again, and he was elected. Then this City of Lincoln—this monument which will stand and speak for that man for ages to come—was a scheme and a pet measure, for the people this side of the Platte river. Then it was that the law directed the removal of the Capital from Omaha, and Gillespie, the Governor, and Mr. Kennard, were appointed Commissioners to find a place to locate it; and, as Judge Briggs said, all they had was a naked act of the Legislature with which to found and build a city. No, nothing but the honest face, untiring energy and determination of that man, backed up by little Kennard, and by what I believed to be "Honest John." They came down here, looked over this broad country, found Hon. John Cadman located on the present town site, and they saw proper to place the Capital here. And I shall show you how David Butler was betrayed. It was by Honest John. Oh! let a man who sleeps with me as my friend; let him live with me when I have but little to share with him and when I have nothing to shelter me from God Almighty's winds, and let me disclose

to him my secrets, and if he has not the manhood to keep them, I will regard him as my bitterest enemy; I will never take him into my confidence again. But Gov. Butler and the other two came here and located this town site, and it has grown from nothing into what it is now, a beautiful young city. During this time, this two years, don't you see there is a malice and jealousy against these men? Men are all selfish, and all made alike by the same Providence. The Democratic party, and by that I mean Dr. Miller, the editor of the *Herald*; the man who has poisoned more minds against Butler than any other person, preaching about fraud and corruption; his party was anxious to tear down Butler and take from him the laurels he had so fairly won. They say, "Now we will tear him to pieces and put somebody else in," when they find they cannot have a Democrat. Some member of our own family gets a little disgusted, and the first thing you know it goes out that David Butler has robbed the school fund. And, sirs, this thing begins to get noisy, becomes clamorous, and the first we know at the special session of the Legislature an investigating committee was called, and Mr. Church, an admitted enemy of Governor Butler's, was put on that committee with the intention of ruining this good Governor; and after investigating him thoroughly they make the report now in my hands, that this was a great enterprise, involving the expenditure of a large amount of money and time, and taking all into consideration David Butler did every thing in the best faith, and for the best interests of the State. So then we find that report put upon the records; and this, as we supposed, was satisfactory to the people. But they did not stop there. They go along, and after awhile another campaign opens, and this tirade is again made anew from the Kansas line to the mouth of the Running Water, against him. But Butler says he believes he is right, and knows he is; and so he starts with his horse and buggy and meets the people, and pleads guilty wherein he was guilty, and denied where he was not; and after the people had a full and thorough

investigation they came to the polls, pronounced him not guilty, and again elected him by a large and overwhelming majority Governor of this State against all combinations. At this session of the Legislature there was a bitter fight on the Senatorial question. They must drag Governor Butler into this entanglement and political squabble. If he had remained in his office, and not taken any side on that question, I have no idea there would have been an impeachment trial. But a few, wishing to elect General Thayer, were anxious to secure Governor Butler's help, but I am told he refused, and thank God for that. Then the first thing we know was a resolution introduced in the Senate, calling for an investigation of Governor Butler's transactions, which culminated in this trial; culminated in eleven articles drawn up by General Estabrook, "old impeachment" himself; and if you recollect, when our distinguished friend Doom, presented the articles in the House, and read them, with that long face upon him that looked as though he was mourning for a departed friend (if he ever had any), the articles exhibited were at least two feet by three feet in size; but, Senators, they boil that document down and finally get it into the size of "Greeley's Almanac." Then they take another boiling. They put "old impeachment" to boiling, and he boils for two weeks and reduces it to five specifications. And so, now, we are being tried upon what is left—all that is left of this grand farce originally propagated against David Butler by certain wicked and designing individuals. I have told you who Butler was; now let us see who it is that is after him. If you recollect, Plutarch, in his Roman History, gives a beautiful illustration of how they did business in those days. He says when Rome was in her palmyest days, certain individuals thought they had the throne within their reach, and they began to look about and see who were to interfere with them; and one, supposing that he certainly could succeed, began destroying, by foul means, all those he thought might stand in his way; and the others, feeling that their success was certain, resorted to the same disgraceful practices, and put to death

and destroyed many good men, in order to insure their own success. But the historian tells us that there was a little boy, twelve or thirteen years old, whom they had forgotten in their hurried wickedness and vile practices—they paid no attention to him, and soon after they had secured the coveted prize, and supposed everything to be secure, little Augustus Cæsar made his appearance, and, with their own instruments stained with the blood of innocent men, put them to death, ascended the throne, and robbed them of all their power and their glory; and I give my friend, the Honorable Manager Doom, divine notice there may be a young Cæsar who will rise up and clean him out. I proclaim here that there is a slate made up by which Butler is to be impeached and put out of office, and he and his family thereby disgraced forever, but there may be a Cæsar rise up in this case. It may be Furnas, or it may be the young Cæsar, the Honorable Manager from Nemaha, who sits at this table (Mr. Porter.) So look out, Gov. Doom, that your long desired prominence and glory is not taken from you by younger and more worthy men.

The Hon. Counsel, Gen. Estabrook, has alluded to the school fund. Why, sir, when he came and talked about school funds he touched it very lightly; he was afraid to take hold of it. Now, Senators, while I don't want to take up too much of your time, I feel an interest in this matter. What man would have done better than Governor Butler in these transactions? There are none of us perfect. If we were, there would be no hereafter for the Hon. Counsel Estabrook—we would all go to the same place. The Hon. Counsel makes naked, bold and bare-faced charges that the Governor has stolen the school fund; but fails to bring any proof or evidence to sustain the charges. It is a direct attack upon the good name of Governor Butler, and that is all he is here contending for. Governor Butler cares nothing about money; he cares nothing about his property. You can take all that, but leave to him his family, his good name, and good character. The counsel has seen fit to make

in this hall these vile and wicked charges. Although the counsel is a wealthy man, he never bought a cent's worth of property in his life, but all he has was given to him; and on this property he has never paid a cent of taxes, either city, county or State; but by means of the technicalities of the law, he has escaped that burthen, as does the criminal, in some instances, escape just punishment. To hear him talk, a stranger would think that he is as perfect as Adam before he ate the apple; but the truth is he comes here, to conduct this case on the part of the State, because Governor Butler refused to appoint him Attorney General of the State. But I do not desire to say anything further about General Estabrook. I will let the old gentleman alone, for the worst punishment inflicted upon him as well as others was when he was brought into the world.

We will take up Article 11th, and the testimony which has been brought out with respect to it. The first witness on that point was Mr. Cropsey. He said he went to Gillespie first, and asked him if he owned any of the lots in block referred to. Gillespie replied that he would look and see, and afterwards saw Cropsey and told him that he had no interest in them. Cropsey then found Butler, who told him he owned the lots, and that he would take \$2,400 for the block. On cross-examination, Cropsey said that it was all straight—that Governor Butler was in the habit of selling lots that way. After that, Mr. Kennard is called upon the stand, who tells just how it occurred that this block was bought in the way it was. They had a large carriage, and it drove along down the street, and in passing this block, the Governor asked what the block across the way cost. They told him \$2,000. "Then," said he, "I will give the same for this." The crier called off the block, and it was sold at public sale to Governor Butler. After Mr. Kennard testified, the prosecution brought Mr. Gillespie on the stand. Now, that is the first time "Honest John" turned up. Now, I wish to say that I have always thought well of John Gillespie, but here he turns States' evidence. "Honest John" was asked whether there was a public sale of this block,



and he said there was none that he knew of. They asked him if he was around, and he said he was. Then we called Mr. Patrick, who was the clerk of the sale, and he says that by order of the Commissioners, the auctioneer sold that block at public sale. He stood up and cried it aloud from the carriage. Other carriages were around when it was cried off.

Now, why did John say that? Why, it turns out, from Mr. Patrick's testimony, that, after Butler bought the block, he, John Gillespie, went to the Governor and said: "I would like to have three of those lots; what will you ask for them?" "The same as I paid," says the Governor; and after a while the Governor finds, after changing around some, that he has all of that block but these three lots, and he says "I will have to take these lots back from Gillespie," and that is what he is mad about. That is the reason why John Gillespie has appeared. Why, gentlemen, that whole testimony goes to show that the sale was fair and binding. If we bought that block, we paid for it, and we deny the misdemeanor charged against us. Tom Kennard swears in his testimony that Butler never bought a lot without paying for it. Now we come to the article relative to this grant of land to the S. C. & P. R. R. One of the specifications says that the Auditor did not give his consent to this grant. We say in our answer that he did, and they put upon the stand Jesse T. Davis, of Washington County. He says he came down here as the attorney of that road; that Governor Butler did not agree to give all of this land in one body. All the Commissioners seemed to be agreed upon this. Mr. Davis swears that John Gillespie's only objection to giving this land was with regard to giving it in so large a body. Mr. Davis said the three Commissioners agreed to meet together. Two of them met; and if Mr. Gillespie did not see fit to come to the meeting, it was not their place to run around and hunt him up. Hon. Counsel Estabrook says they had not the right to give these lands because one road ate the other up, and that the law did not provide for the consolidation in this way. Was not the road built, and would not the

land have been given if the consolidation had not been effected? Certainly. But through this consolidation the land was given to the same road, but in the consolidated name only, the State receiving the same benefit as if the consolidation had not been effected. Why, could Gov. Butler, Gillespie and Kennard stand back and refuse to give this land, when the railroad company came here and showed that they had complied with the law? Certainly not. Now we pass on to the "Tichenor Loan" that the *Herald* has blown so much about. I got an idea from the papers that the Tichenor House was only about fifty or sixty feet square, one story high, and worth maybe three or four thousand dollars. How does it turn out to be now? And Mr. Gillespie says he did not give his consent to the loan. We have two applications here, one in the handwriting of Governor Butler; and John Gillespie endorsed this application on the back of it, giving his consent in writing. I hold it in my hand, and yet he swore before God, that he did not consent. "Honest John" is a slanderer. Gillespie says he would consent on conditions that he had in his own mind, but did not express them to Butler. My God, why did he not say so to Butler at the time? If he had said he should not have had it, Governor Butler would never have consented to the loan. The truth is, that John Gillespie is at the bottom of this Tichenor loan matter; and here comes in this little Brock, of whom I am going to speak after awhile. But, gentlemen, I say this Tichenor loan is a swindle on Governor Butler. Mr. Cassell says the property is worth \$35,000; another witness says \$30,000, and Mr. Robinson \$20,000, and it is insured to-day in a good company for \$8,000. Here is the charge that the counsel talked upon for three and one-half hours, and I have to defend it.

John Gillespie, on the fourth specification, turns up again. He says, before December the contract was let for the superstructure of the University also, but he did not say that until it was drawn out upon cross-examination; but he did say that \$47,500 had been drawn on the contract, and we bring Kennard on the stand and show

that the lumber and material on the ground was sufficient, with the work done, to cover the money drawn, and then they charge about exceeding the appropriation. That disposes of the University and the Ward contract. Now, sir, I will pass down to the third Article, which is the Chase matter. What does our answer say about that? We will see what the truth is—and you will recollect that Mr. Estabrook did not read this right, and I was going to call his attention to it, but my colleague told me to let him alone. Here it is. "This respondent, for answer to Article third in said Articles of Impeachment, says: That it is true that for the time therein stated, Champion S. Chase had been the Attorney for the State of Nebraska, and as such Attorney, had rendered certain services for said State, and it was the duty of this respondent to determine what compensation for such services was fair and just, and according to what was paid in similar cases, but this respondent distinctly denies that he did, at the date therein stated, or at any other time, wilfully, falsely and corruptly determine and represent to the Auditor of said State, that he, this respondent, deemed the sum of \$2,000 to be a just and fair compensation for said services, and denies that he wilfully, corruptly and unlawfully induced said Auditor to issue two certain warrants for the sum of \$1,000 each, under the pretense that the same were issued for the services of said Chase, as in said articles charged and set forth.

But at the date of the issuing of the two warrants aforesaid, the State was indebted to said Chase in the sum of about \$1,600, and said Chase was still in the employ and service of said State, and this respondent, then and there believed, would continue as such Attorney; and after the issuing of said two warrants, this respondent went to said Chase and delivered to him one of said warrants, then and there stating to said Chase that he would be in need of some money with which to enter for the State certain saline lands, no money having been appropriated for that purpose, and that if he, said Chase, would not object, he would retain the other warrant until

this respondent returned from Washington, whither he was then bound—to which said Chase gave his consent; and this respondent further represents that upon his return from Washington, this respondent determined to appoint Seth Robinson in the place of said Chase, and thereby end and determine the services of said Chase; and to that end settled with said Chase up to that date, and afterwards caused a warrant to be issued to said Chase for the amount found due him, having previously, but after the appointment of said Robinson, paid the money received on one of said warrants into the State Treasury, and caused the same to be cancelled, having entered the saline lands with an unexpended balance of money, appropriated for that purpose in 1867, but of the existence of which this respondent was not previously aware.

And this respondent most distinctly denies that he did wilfully and corruptly appropriate to his own use, one of said warrants, or the proceeds thereof, or any part thereof, contrary to his duty and oath of office, as in said article charged, and denies that in that regard he has committed, or was guilty of a misdemeanor in office."

Now you can see, Senators, when he got the \$2,000, he expected Chase to continue on as State Attorney. How does the proof correspond with that. Their ready, willing witness, Chase, don't deny it. When ever he found out that the impeachment was certain, he began to figure how he might get his photograph on the witness stand. We say our answer is true, and the proof here shows it. I ask the Senators here to turn to one place where the State has lost a dollar; but you say there is some interest on that money; yet there is nothing going to show that Gov. Butler got any benefit from that money. Now we pass along to this Hall matter. And here, Senators, is a transaction that I am a little tender about; for, sirs, I have had the pleasure heretofore, of being Mr. Hall's attorney, and he is a pretty good client; but I have a right here to say something about him when he comes on to this witness stand and contradicts himself, and

shows himself such an anxious witness in this case. Why, sir, that carpet in front of the President's desk was pretty nearly worn through where he has sat during the progress of this trial. Why, sirs, I have been asked a dozen times if he was a Manager, and I didn't know but that my brother from Nemaha had got assistant counsel; but, sir, when the clerk called for him, he was on the witness stand quicker than a flash. One thing I like about him is that when he says a thing he will stick to it; and it is said—not that I mean to say that he said what was not true—that a lie well stuck to is better than the truth sometimes; and if Hall is mistaken and finds it out, he will still stand to what he said. Now, there is some reason for the Hon. Managers, Messrs. Porter, Doom and others, showing a deep interest in this important trial, but, I venture to say, no one of them has exhibited a deeper anxiety than this Cape Cod witness Hall, who has worn the carpet off the steps of the President's stand, and no doubt his pants, in sitting and consulting with the Managers touching this case, and he nothing but a witness, and a poor one at that. When his name is called, he pops on the stand determined to give the job the best turn. In the shop; but unfortunately, his friend Crowell puts a quietus on him, and between the two the truth was fully revealed. Hall said the last of May or the first of June, he came down here and asked the Governor about a lease, who told him it was worth \$5,000, and if he was not Governor he would give it himself. He then described the land; it was near Tichenor's; and then I asked him, on cross-examination, whether the Governor did not say there were others interested in that lease. "No; he said not a word," was the answer. Now he fixes that conversation at the Governor's office. He says Crowell was by, and this Crowell, when he came upon the stand, and showed that little honest face of his, I said to Marquette, "Now we shall get the truth." He bore the ear-marks of intelligence and honesty. So, now, Crowell says he was present, and heard Hall say to Butler he would like to lease that land, and Butler said he thought it was worth \$5,000. Well,

he was asked by Mr. Estabrook whether he meant the \$5,000 to go to himself, or the State. He said he thought he was speaking of himself, for he says the royalty was talked about, and he understood the \$5,000 was going to the Governor. There is no doubt the \$5,000 conversation took place; we claim that; and we say the reason we did not lease the lots, was because we had promised them to other parties. And our answer says they had invested their money and had vested rights there. As far as that goes that would corroborate Mr. Hall. Then, on cross-examination, I asked Crowell to state what the Governor said to Hall about other parties being interested. He said he stated some gentlemen, he thought Cahn & Evans, were interested, and there is the whole long and short of it. It was shown that David Butler was only in with them to aid in opening up their enterprise. He was to put in capital, but was to derive no benefit from it, and the idea was that if he [Hall] leased a portion of that land, he took the place of David Butler and paid a one-fourth interest, and the letters I have just read you, passing between Butler and Hall, confirmed the statement of Butler in that regard.

Oh! Mr. Hall, how can you get up here and make such a broad statement, and say there was not a word said about other parties, when by your own communication, and the testimony of your friend Crowell you are flatly contradicted. Mr. Hall is in favor of tearing down men of enterprise instead of helping to build them up, but that letter, and the brother-in-law of Hall fix him up now and forever that his statement was untrue. So, Senators, that disposes of that much; that there was a mistake on Mr. Hall's part. A man's anxiety will sometimes run away with his judgment and his recollection. If I thought you, Manager Doom, was an upright, pure and honest man, and was not on the State for Governor, when you shall have disposed of my friend Butler, I, perhaps, would look upon this prosecution with more charity; but when I see the Honorable Counsel Estabrook, the personal enemy of the accused, leading the van,

and "Limber Jim," so called, standing behind him, and the rosy cheeked and blushing little Hudson bringing up the rear with \$100 in his pockets, given him by his constituents, I am constrained to say here is a raid being made upon an honest man; a slate fixed up; and unless that slate is a success, every one engaged in the enterprise must stand from under, for war will be the motto upon every one, who, from selfish motives attempted such a vile and wicked scheme. Now, was there anything about that Hall matter? Governor Butler says he was responsible with Cahn & Evans, and says to them "Go on. I will be responsible for one-fourth of the expenses, and if it is a success I will have no interest," and when Hall insisted on having this lease, he said: "I can't let you have it without writing to these parties" and after he had communicated with the parties, he wrote Hall to say he could not comply with his proposal. The eighth article they have abandoned, and the first specification to article seven. They do not rely or claim anything upon them, and yet we have been charged in eleven articles and various specifications, and been compelled to answer all of them, and now they abandon three-fourths of all their charges, and say by the very act, that they were untrue and falsely made; but the Honorable Counsel, Estabrook, when he came to the University question, spent three quarters of an hour to show that simply because Brock, the witness, made an offer to bribe Governor Butler to procure the office of Treasurer in the University, that, for that alone, he should be impeached. Now what does the answer say in regard to that? The charge they make is, that Brock offered \$500 to be appointed Treasurer of the University. And Brock says Governor Butler said "No," or intimated it. But that was the end of it. He did not pretend to say he would take it. The proof is, by all three witnesses, that he, [Butler] worked for one McConnell. Mr. Estabrook claims, because Brock went in and offered to bribe the Governor, for that reason you, Senators, ought to impeach him. Because the Governor did not kick the fellow out of the office,

he ought to be impeached.

If I wanted to be insulted for offering a bribe I would never offer one to the honorable counsel, Estabrook, for he is a good-natured man, and never gets insulted at such little things. The proposition is absurd, and he don't believe it himself. But he abandons this school fund almost entirely, and yet stands by and argues Butler ought to be impeached for that. The facts are, and the proof shows, that Governor Butler made no reply to the proposition, but treated it with contempt, and worked for, and succeeded in having elected, the present Treasurer, Mr. McConnell. But on that subject enough has been said. There is nothing in it, and so I think the Senate will understand it. And yet the learned counsel stood up for about an hour and a half to show you every man must be free from, and above suspicion. Now, having called your attention to all the articles but the main one involved in this litigation, I will call your attention specially to some of them again. As to Article 11, is there a doubt about that transaction? If their theory is right, Cropsey's title is not good. But I will risk that. I would like to have those lots myself.

Next comes the Sioux City and Pacific Railroad grant. I think that is explained very clearly by Jesse Davis—that all three Commissioners gave their consent. Gillespie consenting that that road should have the lands, but differed as to whether it should go in one body or not.

In regard to the Tichenor House, I believe there is not a member of this Senate but believes that the money could be obtained on the Tichenor loan, on the strength of the evidence given at this time. The Tichenor loan is secure, all will admit. There is \$15,000 against the property; the property being worth \$25,000, with \$8,000 insurance. It has been sold to somebody subject to these mortgages, and of course they must be paid before the title is perfect. I feel sure that that loan is safe and secure.

The Chase matter is testified to about as the answer sets it forth, and there never would have been a charge of that kind, or any intimation that anything was wrong concerning it,

had it not been for a little personal spleen that the witness, Chase, had against Governor Butler; and his anxiety to turn up some place, in the impeachment trial, even if he had to be a witness. Vanity was the predominant feature in his testimony. The secret animosity was hidden from public sight, and ought that to have been so, when Governor Butler was the first man to take the witness by the hand, and make him the Attorney of State, a position which his ability never merited. Oh, ingratitude! ingratitude!

Article 5 we admit. We did exceed the appropriation. They were to expend \$50,000 on an asylum. Now what did the Legislature intend when they passed that act? It intended that the State should not be taxed to erect these buildings; but that they should be built from the proceeds of certain lands. David Butler, by various means, induced people to come in here and buy lands, so that instead of the State realizing \$50,000 on the sale of lots here we realized \$150,000, and then he did just as I would have had him do for me. If I have an agent, and tell him to sell land for \$10.00 per acre, and he sells it for \$15.00, am I going to quarrel with him about it? John Gillespie swears that the State made a large amount of money out of the action of these Commissioners, and where they exceeded their authority in letting contracts, the people have not been taxed to meet the extra expense. When you say that David Butler was working for his interest in these transactions, you are laboring under a wrong impression, for when he told John Gillespie he was out \$30,000 he told the simple truth. If the Governor had wanted to act dishonest he could have done so, and made a million dollars out of these transactions. For some reason "Honest John" has secured a good house, has lands and has money in the Bank, and his notes never go to protest, while David's very often do. During the fixing up of these things, my friend, Mr. Gillespie, never said a word; but kept his mouth closed. He let David go out and do the talking; he let David have the conversations, out of which so much capital has been made. Kennard is a still man, but he is a true friend, he is Butler's friend,

and says to him "stand up for the right, and I will back you." The school fund question the honorable counsel dodges. I am going to present this just as I understand it, and I believe there is not a man within the sound of my voice, and I will add, there is not a woman, who will not agree with me in the proposition I am about to make. In the first place, I am going to read a few sections of the statutes, that you may be able to judge of the value and reliability of the testimony of Sweet & Brock, who have criminally violated the law, and from their testimony you can judge whether you will believe a word they say or not. And then you take the witness' means of knowledge, another important element in considering testimony. Who are the witnesses, and what is their testimony? There is proof here that that money was procured by Governor Butler under the resolution passed by this Assembly authorizing him to do so. Now, Senators, I want to take two or three positions in this school fund matter, and see how it strikes you. Why, the language of this resolution is plain, showing how Governor Butler was to obtain the desired result. What business had the Governor, to accept that proposition? Was he obliged to do so? Was it one of his duties pointed out by the Constitution? No, sir. And I defy anybody to put upon him any other than his duties; but he accepts the proposition, and says "I will go." And so he went there as a special agent for the State. Will you point me to where the State ever paid him a dollar for going, or paid any of his expenses? Well, this to start with, is a voluntary service, and when a man does a thing for you for nothing, don't abuse him, if he don't do it quite right. What did he do? He did as that resolution requested him, and procured a warrant for the amount due the State and had it deposited in the bank at Omaha, and then sent the Deputy State Treasurer with authority to draw the money on the warrant, and bring it here and deposit it in the bank of Sweet & Brock, the place where all the State money was kept; in the hands of the State Treasurer and his deputy. And will the Honorable Counsel tell me, if you please, the

day, the hour in the day, or any time when David Butler had in his hands this money. He never held one ten dollar greenback. The money was in a warrant until it was drawn by Brock, the Deputy State Treasurer. It is true this warrant was payable to David Butler, but as Governor. It was in Kountze's bank in Omaha, as belonging to the State of Nebraska, and not to David Butler; and from there it is brought to Lincoln, and placed in the care of the State Treasurer. But they tell you Governor Butler checked it out of the bank of Sweet & Brock. How did he get it? We claim that he borrowed it from the Treasurer, the proper custodian of the public fund. As such let us see what the Treasurer's duty is in regard to it. I will read Revised Statutes of Nebraska, pages 24, 25 and 26. I commence at—

"SEC. 17. The Territorial Treasurer shall reside and keep his office at the seat of government.

SEC. 18. It shall be the duty of the Territorial Treasurer—

*First.* To receive and keep all moneys of the territory not expressly required to be received and kept by some other person.

*Second.* To disburse the public money upon warrants drawn upon the Territorial Treasurer according to law, and not otherwise.

*Third.* To keep a just, true and comprehensive account of all moneys received or disbursed.

*Fourth.* To examine all warrants drawn by the Auditor, and, if there is sufficient money standing to the credit of the fund against which the warrant was drawn, to pay the same, he shall countersign it, and charge against said fund; but if there is not money sufficient to pay the warrant standing to the credit of the fund he shall reject it, and shall neither countersign nor pay it; and no territorial warrant hereafter issued shall be valid without being countersigned by the Treasurer as herein provided.

*Fifth.* To keep a just account with each fund, and each head of appropriation made by law, and the warrants drawn against them."

That is the first provision, now—

SEC. 20. The Treasurer shall give duplicate receipts, under the seal of

his office, for all sums of money which shall be paid into the Treasury, and the person receiving the same shall deposit one of them with the Auditor, who shall credit such person accordingly, and charge the amount to the Territorial Treasurer.

SEC. 23. If the Territorial Treasurer shall wilfully refuse or neglect to pay any warrant lawfully drawn upon the Treasury, when the money for the payment of the same is in the Treasury, he shall forfeit and pay four-fold the amount, to be recovered by action against the treasurer and his sureties, on his official bond or otherwise. He shall also suffer such punishment as the law may provide."

And the law tells about what that punishment shall be, on page 604.

SEC. 66. "If any officer or person who now is or hereafter may be entrusted by law to call"—Senators right here. Was he entrusted or empowered to collect this five per cent. fund?

"\* \* \* Or shall receive for safe keeping—" Now, Senators, just here hangs all there is in this *money question*—"Or shall receive for safe keeping money belonging to this territory, to any county of this territory, or to any such fund as aforesaid, when such officer or person shall be thereto required by the law, and demand only made by the successor or successors of such officer or person in office, or by the officer or person to whom such moneys, &c., ought to be paid over, or by their attorney, or agent duly authorized in writing, signed and acknowledged, if such demand be practicable, every such officer or person shall, on conviction thereof, be punished by confinement in the penitentiary for any term not less than one year nor more than ten years: *Provided:* That no person shall be committed to the penitentiary under this section, unless the money not paid over shall amount to five dollars, or it appears that such failure or refusal shall be occasioned by unavoidable loss or accident."

There are only those two excuses. That is the law bearing on that. Now, then, there is another law. I will read from the laws of Nebraska, 1869, page 161, Sec. 1: "It shall be the duty of the

State Treasurer to keep constantly on hand the *identical funds received* by him from *any source* whatever, in his *official capacity* as such *Treasurer*, until he shall pay out the sum on orders or warrants drawn on the Treasury by the Auditor of the State, or until it shall be otherwise paid as provided by law." Now hear the language of this, Senators. It appears, in the testimony, that this money was put in the general fund with the other State funds by Sweet & Brock and banked upon by them. Now listen to section 2—"That it shall be the duty of the said Treasurer, at the time of receiving any public funds belonging to this State, to make out a full statement and description of each note, bond, or bill so received, giving the date, denomination, and character of the money, bonds or notes received, and on the last day of each month such description and statement shall be sworn to by such Treasurer and filed by him in the office of the said Auditor."

Now, sirs, section 6 reads:

"If any officer herein named shall fail to perform the duties enjoined on him by this act, he shall be deemed guilty of a misdemeanor, and on conviction shall be punished by fine not exceeding one thousand dollars and by imprisonment not exceeding six months." Now, then, what is Mr. Sweet going to do? Oh, he says he did not know the money was in the Treasury until some time after it was gone, in June, or may be August. If he did not, whose fault was it? Not Governor Butler's; but we find that he did know of it, for he spoke to Butler about borrowing it, not long after. "About August, Butler first mentioned the propriety of borrowing the money." Take that for true, and I hate to call Sweet's testimony true; I say it would be proper for this Senate to throw the evidence out. But, for the purpose of getting at the real facts of the case, you can do as you please. He says the first time Butler mentioned it, it was some time in June or in August. He says he never told Hathaway, Seymour, Hilton, or anybody, that it was in the Treasury, and that if he did, it was "a political dodge;" and if he said the interest had been paid, it was "a political dodge."

too. He denies having the conversation with these men to the effect as stated.

They let him go off the stand, and put a man on by the name of Brock. He stated in his evidence that James Sweet lived in Nebraska City. Now, the law says the Treasurer shall reside at the capital, and he has no business to live away from the place where his duties are. The question was asked, "What acts constituted a deposit in the public treasury?" Now, see what the answer is, "The course pursued when money is deposited, is to make out duplicate receipts, and upon the stub to put the name of the party, the date and amount and the entries on the books were made from the stubs. The practice was to keep the money received during the day, after making the entry in an envelope, and then to examine at night the entries and the amounts to see if the amounts correspond." etc. Now, Senators, here is where the rub comes in. I have a little almanac of 1869, which I wish you to examine. Brock stated he left Lincoln on Saturday, the 15th day of May. He got back on Thursday; that would be the 20th. Keep that in your mind. He left on Saturday, the 15th day of May. Now, sir, he himself gave the round trip he took; and he got back on the 20th; giving him five days. Brock says that when money was received during the day, after making the trip, he, on the afternoon of the 20th, in conjunction with one McConnell, counted the money and put it into the general fund, where all State moneys were kept, and used it and loaned it as other money. Now, that was on Saturday, the 20th. When was the first entry made in those books? On the 22d. What examination was made the night after the money got there? According to Brock's own statement, on the evening of the 20th, because McConnell and Brock say the money was counted in the afternoon. Brock declared he put it into the common fund and used it as other money. So on the 20th that money went into the place where all the State funds are kept. Now, Sweet testified that every night the books must balance, showing the amount of money received and paid out during the day. I read

to you, Senators, from his testimony. He and Brock both swear, and the books show, that there was no entry of this money, of any kind, until the 22d, two days after, and no valid entry, under which anything is claimed by the prosecution, until the 25th—five days after the money was put in the Treasury, as Brock and Sweet both swear, and used like other money. Now, for these two days where was the money? It was like Noah's dove that the honorable counsel Estabrook told about. I would like to know where, in God's name, that money was, from the 20th to the 22d, unless in the Treasury? There were two days no entry was made at all. And Sweet swears every night the books must correspond with the amount paid in. Now, he had that money put into all the other State funds, and must have placed it to the credit of somebody, either Brock or Rix. Now, that was the 20th, There were three certificates issued on the 22d, which he took up and cancelled, that Butler knew nothing about. You must pay no attention to that. So, from the 20th to the 25th, five days, the money was in the common fund of State money, without an entry. Now to whom was this money loaned? When two witnesses like Sweet and Brock come on the stand, what can you believe? Sweet and Brock, if they don't arrest their course, and get out of their wicked heads their idea of corruption and lying, I don't know where they will land. Nobody is here to account for the whereabouts of this money for five days but Brock himself. He is the only man that swears to these entries being made, and yet he don't tell you where the money was the first two days and the last five, except with all other State moneys in the State Treasury. I ask you, Senators, who would have owned that money supposing David Butler had died before Brock got back from Omaha, where he received the money? Would it have gone to his estate? Why is there any question but it would have belonged to the State, and whenever Brock got the power of attorney from Butler the money was in the Treasury from that moment. The law says when the Treasurer has been entrusted to collect State funds he shall keep

it so and so. From the day that power of attorney went into the possession of Brock, the money belonged to the State. Suppose again, that man Brock had been robbed, who would have lost the money? Would Governor Butler? Why, no. It would have been a total loss to the State, and I repeat, that whenever the power of attorney was given to Brock, with a full understanding the money belonged to the State, from that time it was in his custody and under his control, and the law says, in the absence of the Treasurer the deputy shall officiate, and do all the duties imposed upon the Treasurer. He was representing Sweet, and therefore it was just the same as if Sweet himself had the power of attorney. So, no matter what Butler did, when it came into Brock's hands, as Treasurer, it was in the Treasury before it got to Lincoln. Brock swore these certificates of deposit were issued on the 22d, and cancelled on the 25th, because he wanted to save three days' interest. What made him issue the first two? Was he authorized? No. These certificates were made out without our knowledge and consent, and then laid in the bank. I asked when were these certificates given to Butler, and he could not tell. Ah! there's the kink. If he could swear they were given to him on the 25th or 26th, or any time in reason, why that would do. But he don't do it. So, you see, Brock is entirely oblivious on that question as to how they were got; and those certificates were made out by Brock for some unholy purpose; and Governor Butler borrowed it, and thus these mortgages were fixed up. Both Brock and McConnell swore that the money went into the common pot; used up and loaned out from the very afternoon he got there. If he had proven David Butler got those certificates, and asked that they be delivered to him at a certain time, that would have been all right. But he don't say that; and Butler himself cannot say when he got them or how they came into his possession. But he knows he never got them from Brock for months after. The certificates were made out, and the entries fair and square, but little Brock was doing as he told McConnell that he



was, fixing those books so that "no d—d Legislature could be any the wiser thereof." You must take the testimony as you find it. And so they all swear—McConnell, that before Brock went to Omaha he knew that to be the State fund, and Brock said to McConnell when he came back they would be easier; and when he did come back he put out his hand and said, "How are you? I have got the State fund." And he put the money into the general State fund. Take the evidence of Seth Robinson. Who is here to contradict him? Did Brock contradict him? Not at all. Robinson says that at the conversation when the power of attorney was drawn, Governor Butler said, "It is not my money. It belongs to the State." And that Brock well knew; it was the 5 per cent. fund. Senators, I would like to take about half an hour longer. If you would adjourn till 7 P. M. I will finish up soon.

The Senate adjourned until 7 P. M.

#### Evening Session.

The Senate sitting as a Court of Impeachment, met at 7:15. The roll was called by the Clerk, all the members answering to their names.

Mr. REDICK having the floor, continued his remarks as follows:

MR. PRESIDENT AND SENATORS: If you will give me your attention for a short time, I will now finish my argument. When we adjourned, I was speaking of that school money. When that money went into the First National Bank, it went in as money belonging to the State; having been procured by the Governor, not in his own name, but in the name of the State. Then Governor Butler had no control over the money. I will try to show you that when Mr. Brock went after that money, he knew it to be the property of the State of Nebraska, and not Governor Butler's. Now, Senators, it will not be proper to refer you to the testimony of Sweet's books, because Sweet says he knew nothing about this school fund until later; but we will refer you to Brock's testimony. This whole evidence is a part of one piece. They brought this witness upon the stand, and they must abide by his testimony. If he has stated

anything against them, they are bound by the rule of evidence to abide by what he has stated, as he is their own witness. Now I will read what I believe to be the identical testimony of this witness.

Manager PORTER. Mr. President: I desire to state before this testimony is read, that we will not be bound by it. I deem it correctly reported, but it is not the report made by the sworn reporters, and it may have errors in it.

Mr. REDICK. I take this from the *State Journal*, and wherever you find that the *Journal* is incorrect, just say so. "I brought the money here; can not tell how much money I brought; think it was about \$17,000; am under the impression that I used part of the money before I returned." He tells us that he is "under the impression" that he paid a note with part of the money. Now, Senators, that is the first "nigger in the wood-pile." Don't you think a man would remember it, if he paid a note? Would not he have taken the note up, and brought it down to David Butler, for whom he says he paid it? Let us look at this in a business light.

"I brought the money here; arrived. I think, about 12 o'clock, M.; don't know what I did with the money; think I put it in the drawer; don't know when next I saw the Governor, or when I next conversed with him; my impression is that I had a conversation with him soon after, but couldn't say; he told me to issue him three certificates of deposit for \$5,000 each, and place the balance to his account."

Now, Senators, there is where we complain. There is where Governor Butler is being implicated by a couple of persons who are trying to work themselves out of this difficulty. The distinguished counsel for the Managers has said that if the money was in Sweet & Brock's Bank, they were personally responsible. Sweet & Brock took alarm and have been trying to fix the matter up. "On the 22d of May, I filled out three certificates of deposit for \$5,000 each, and placed to his account on the books \$1,466, and on the 25th day of May I cancelled these certificates and prepared three more to the same amount; the printed form of the certificates

were the same and the wording was a little different."

My belief with regard to these certificates of deposit is, that the money was first put in the bank by certificates of deposit issued to Nelson C. Brock, who held all the State moneys, and they were afterwards taken up and destroyed. These three certificates were issued without the knowledge or consent of Butler. In answer to the question whether this change in the certificates was made by virtue of an understanding with the Governor, the witness says there was no agreement made with the Governor—they did it themselves, for the purpose of saving three days' interest. "Governor Butler made arrangements with the bank to overdraw his account, and overdraw it to the amount of \$16,000 or \$17,000." That has nothing to do with this matter; but you see Senators, "thereby hangs a tale." This, however, is another question. Now I will read you further: "Governor Butler never told me from what source the money came." Now, you see, Senators, his lawyers have told him that he must not answer where the money came from. "Governor Butler stated to me sometime last summer that he had loaned his money out in Pawnee County, and could not get it back." He never loaned a dollar in Pawnee County, but he has lands down there to borrow money on, on which he gave a mortgage for the security of the money he borrowed from the State. There was a mortgage first given a long time ago—I cannot tell just when—but when it was given Governor Butler insisted that it should be dated back to the time the money was got; and it was sent to Pawnee county for record, but the stamp was deficient and it was sent back, and then these others were drawn. You must remember these were not the first mortgages. Brock himself took the first mortgage to the bank, and kept it there, and then long after Sweet said he was ashamed to send it to be recorded. If you find, Senators, that this money was in the Treasury, then it was the duty of the Treasurer to see that it was properly secured when loaned out.

Here is the cross-examination of

Brock. Now we'll see what he says: "Mr. Sweet is my uncle." I asked that question to show the relation. Now if Governor Butler had had a nephew instead of John Gillespie, it would have been all right; but he trusted "Honest John," and he went back on him. You remember I asked him about John Rix, and he says, "John Rix is my particular friend." See how easily he tells a falsehood. "I met him in the banking house of Sweet & Brock;" another falsehood. "He is not a married man that I know of." That is untrue. He was not a man at all, but a myth. "I cannot state when I first learned that it was school money. I knew nothing about it when I got it; it was none of my business." He swears he could not say whether he sent Governor Butler a voucher at the time or not, and then he says I used this money after putting it into the general fund, just as other bankable money, etc. Now, I ask you if you will impeach Governor Butler on that testimony—on the testimony of Brock alone? For we have impeached him, and here is where I laid the foundation. I asked him if he did not tell McConnell that he was going to Omaha to get the State funds, and that, with the receipts from the County Treasurers, would make money easy and flush with the bank; and he says he don't remember, and that he did not state to McConnell that this money would go into the State funds. He states that at that time the State funds were kept in his own name. See what he says: "I had some State funds in my own name; cannot say whether I had \$50,000 or \$60,000." Senators, how does this look? "The law was so that we had to keep the identical funds, and I issued certificates of deposit to myself, to evade the law." Tied up by the law of 1869 as tight as any law could tie up money, and yet he states he had \$50,000 or \$60,000 of the State money in his own name. Supposing he had gone off to Germany or Canada, (where he ought to have gone long ago, before he got into the confidence of the people of Nebraska,) tell me what would have become of the State money? Would this \$15,000 have been secured to-day by a good man, on good security? No, sirs! It is a wonder we

are not robbed of all our funds by the Treasurer and his young smiling deputy, Brock. Hear what Brock says again:

"The law was so that we had to keep the identical funds on hand, and I issued certificates of deposit to myself." What for? To evade the law. Why, Senators, look at that. Swearing with his own mouth that he had done it to evade the law. Will you believe what he says in regard to those certificates in the first place? Would a jury? Would not any good, high-minded Judge tell a jury they had a right to discard that witness's testimony entirely, under the principle that a man who wilfully swears falsely on one material point will swear falsely in all? "The funds," he says, "were kept in the name of John Rix for the same purpose." What does Mr. Sweet say about John Rix? He says he does not think his name came on the books before the law was repealed. So the testimony of the Treasurer and his deputy don't correspond? What were they kept in the name of John Rix for? To evade the law. Then, at this time, all the money that went into the State Treasury stood in the name of Nelson C. Brock and John Rix. Would not you sooner have the mortgages on good lands than the money in the name of John Rix? "Who first suggested the name of John Rix?" "It was never suggested. I made the entry myself. I kept the books. Never said to McConnell that Sweet was dissatisfied with the absence of the record of the \$17,000; that if Sweet would stay at home and attend to his own business, I would keep the books so that no d—d Legislature or investigating committee would be the wiser therefor." Says he never said that. You may think McConnell behaved bad on the stand; you are apt to; and I will say he did, because he didn't take his hands from his face. But to attack his credibility, and say he is corrupt, is wrong. I find, after inquiry, that he is a man of good character, and upright in his dealings. Take him for what he is worth. He was called to show how the school fund came into his bank; to show that Brock told him he was going for the school fund, and when he came back

he said he had got the school fund. Brock does not swear that he did not tell McConnell that he was going after the school fund. McConnell says he told him he was going for it, and when he came back, that he had it. Now that contradicts Brock flatly. Robinson swears that in the Capitol, when the power-of-attorney was drawn, Butler told him (Robinson) in the presence of Brock, it was not his money; it belonged to the State; and required the power-of-attorney, in the name of the State, to get it; and Brock was by and heard it. He must have known it was State money. Two witnesses have contradicted him. He says he does not think he told McConnell that. When he went through Nebraska City he did not stop and see his uncle, James Sweet. Why didn't he stop and see his uncle? Sometimes it does a fellow good to see his uncle. Why didn't he stop and see that good looking uncle of his? Because, if he had known he was going for the school-fund, he would have wanted about \$10,000 of it to put in the bank at Nebraska City. And he wanted Sweet to mind his own business and he would fix the books so that he could not understand them.

But, as I believe, "murder will out." God, in His infinite wisdom, has so willed, that no man, however smart, or cunning, or shrewd in the commission of crime, and no matter how adroitly he may seek to cover it up, will, sooner or later, be found out, and the wrong doer brought to justice. The criminal, if there is no other means of discovery, will tell it himself. Such, in my opinion, is an immutable law of God. The firm of Sweet & Brock, composed of these two witnesses, dealt largely in State warrants. Hear what Brock says: "The bank dealt in warrants; McConnell was not employed to buy warrants, but bought some; I have bought warrants at a discount; will not swear that I did not buy warrants when I had this money deposited in my name; don't know if I did whether it was at a discount or not; do not recollect saying to McConnell in the presence of Sweet, that he should do the trade in warrants; a small proportion of the State money was deposited in the

bank of Sweet & Brock." The law that I read to you makes it a crime for the Treasurer to deal in warrants, and yet Brock swears he dealt in warrants. And should you present a warrant they would tell you there was no money in the Treasury, but they send you to McConnell, and he will buy your warrants for eighty cents, twenty cents short. Was there ever such a swindle since God made the world, by a State Treasurer and his Deputy? The proof shows that the power of attorney was drawn by the State Attorney. Do you believe Seth Robinson? You may say he was the Governor's friend. So he is, but the Governor has a great many friends who will not swear to a lie for him or any one else. If there is a man who will stand up for the truth it is Seth Robinson. I read again from Brock's testimony: "I told Mr. Gere about the time Croxton was demanding to see the books, that we had no entry of the amount of the five per cent. funds; do not think I told him that Governor Butler must know the amount, because I had sent him a voucher or statement." Now Brock said, before, he would not swear that he did not send the voucher; now he swears he did not tell McConnell he sent the voucher. The accused claims he got the voucher, but among all his numerous papers it is nowhere to be found. He says: "Gov. Butler consented to work for me for Treasurer of the Board of Regents, and I offered to bribe him." Oh, what cheek! What cheek, for that little gentleman, with that smile on his face, to get up and say that he, a boy 21 years old, approached a man like David Butler and offered to bribe him! Why, he is a terrific youth. I have no idea where he will land. If he was my boy I would chastise him every morning before breakfast for five years to come. "What reply did the Governor make?" "He said to me it was no use, because McConnell would be elected. Don't think it required any cheek to do that." Now, just look at it. You know the good nature of Governor Butler. I never knew him fight or insult anybody. Now, if Brock had gone to "Honest John," and offered to bribe him, he would have struck him square between

the eyes. The Governor don't fight. He is characterized by kindness and politeness, is magnanimous, and such a man as the counsel for the State would call a liberal-hearted fellow, like himself. The counsel don't appreciate such a man as Governor Butler. He has no sympathy with that kind of men; but I can see many within this Senate chamber, men with hearts of similar impulses, and which beat in unison with that of the accused. Why, he who stood up there has no more sympathy than a heathen, for mortal man, and yet he told you he would be glad to hear pronounced the words "Not Guilty." He don't mean it. But if he ever prayed in his life, he will pray to-night for conviction. To have a man persecute another when he himself has not the *bona fide* interests of the State at heart; when all the interest he has is the education of his own boy, and wanted the school fund for that purpose only, as he himself states! He talks about the Governor's residence, and charges that it was built by money out of the school fund, but don't bring Ward, the contractor, who can show that allegation to be true or false; no, no! wants no proof, but is vile enough to make these wicked charges before hundreds of people, for the only purpose of casting contumely and disgrace upon a man who has never wronged him or the State out of a cent.

Why, Governor Butler has built up a city here of three thousand inhabitants which is an ornament to the State, and a lasting monument to the memory of David Butler.

Senators, after the Butler race has passed away; after ages of time have gone by; after the graves of all the Butlers have lost every trace or mark by which they were known; aye, after this generation has passed away, those who live after us will ask who was the originator of this grand Capital scheme—who was it that said away out on this broad and beautiful prairie, a hundred miles from anywhere, in the year 1867, the Capital of Nebraska should be located? Senators, David Butler's name is to-day a part and parcel of the history of the country; and whether he is impeached or no

his name will be respected and honored by generations yet to come.

Now, Senators, if you have any doubts about Mr. Robinson's testimony I would like to hear them. I will show you what he says about this school fund. He testified that a power of attorney was made out, which was given to Brock, and upon which he was to draw this money out of the bank. This was signed by David Butler as Governor, and Brock knew that the money belonged to the State before he went to get it. Robinson swears that Butler told him the money was not his, but that it belonged to the State, so that Brock is mistaken when he said he did not know what money it was. So from the time Brock received the money it was in the State Treasury, and Governor Butler had no control over it. Then McConnell stated that Brock told him he was going after the school fund, and after he got back he spoke of it as "the school fund." So I think that is conclusive, and if this money was in the Treasury one minute we have gained our case. Brock got the money as State money, not as Butler's money. But let us see what McConnell says in his testimony:

"I was in the bank when Mr. Brock came with the money, he came in and said 'how d'y'e do,' and said he had the State funds; he took the money out and he and I counted the money over that afternoon and evening; the money was in \$1,000 packages; we took the packages apart and counted the money separately; we put them in the safe where all the other State money was deposited. I do not know whether there was an entry made at that time or afterwards; I don't know positively whether an entry was made but an entry must have been made in some way in order that the books should balance; had a conversation with Mr. Brock after the money was counted and Mr. Brock congratulated himself that Sweet knew nothing about his visit to Omaha, and of the deposit of the money in the Treasury, because if he had known about it he would want part of it to use in Nebraska City; I heard that certificates of deposit had been given by Mr. Brock about eight months afterwards from Mr. Brock himself; Mr. Brock

stated to me that he had dated back these certificates of deposit; he did not state that two sets of certificates were made; I do not think that Governor Butler checked out this money."

Now there are two witnesses upon this point; Brock himself saying they counted it out and put it into the State fund.

Manager DOOM. I think, Mr. Redick, that McConnell stated it went into the general fund.

Mr. REDICK. Well, if it went into the bank, it went into the State fund. McConnell says "we balanced the books once a week." Now you talk to any banker, and you will find that a "trial balance" is struck off every night; the books may not balance for perhaps a week, but there must be a balance sheet struck every night, so as to show how much money has been received and how much paid out. McConnell says the money would have to be placed to the credit of *some one* in order to make the books balance; and now he says he never heard of these certificates of deposit for eight months after they were issued.

But, Senators, I am not going to take up your time much longer. Let me call your attention to the matter of the bonds and mortgages. Here are nineteen bonds and nineteen mortgages, and this "abstract of title" shows the book, page, etc., in which they are recorded. On the back of some of the mortgages, the clerk has forgotten to fill up the blank found there, but this abstract shows that they have been properly recorded; and it was proved by Mr. Alexander that he went to the State Treasurer and got an order from the Deputy State Treasurer, and went to Sweet's bank, because he had never turned over all the papers to the Deputy State Treasurer, and got these papers.

Manager DOOM. We deny that those bonds were in the possession of the State.

Mr. REDICK. Mr. Doom, if I had that face of yours it would be worth \$4,000 a year to me in my business. It has been shown here, Senators, that Governor Butler made out one mortgage, and Sweet told Brock to send it down to Pawnee County for record. When the clerk wrote back

that the mortgage was imperfect Butler wrote for him to send the mortgage back, and gave nineteen smaller ones so as to be able to sell portions of the land, as he had opportunities. These were sent down and properly recorded. Why, Mr. Sweet says himself that he has had various conversations with the Governor about these deeds, and, gentlemen, the fact of their being in the State Treasury is very well established. Sweet told Gere that Brock should have attended to the matter and sent the deeds to be put on record long before he did attend to it. We proved first by two or three witnesses, that Governor Butler told him to prepare the mortgages, but he neglected it until he said he was ashamed to attend to it; and when these last were drawn up they were sent by Brock, to Pawnee county for record. So, now, Senators, look at it. Here are seventeen mortgages, and we bring upon the stand four or five good men who are acquainted with the lands mortgaged, who give us the value of the lands, and when we come to figure it up, they amount to \$33,000—an ample security if you had nothing more. But, besides those, here you have David Butler and the bonds, which are the same as a note. He is good enough for that much yet. Why, his face is good for it. He came up from the ground, and I dare say he was once poor, but his lands have not been got by donations, but in a legitimate way by labor, in which he made his money, and he has a right to it. If the State wants that money, and don't want these mortgages, I will pledge that I will get it on those mortgages, without interest, on a day's notice. Now there is another fact. I speak here from what I know from proper quarters. Mr. Sweet swore that the interest was not paid, but he made a report once that the interest was paid; but if you would allow an explanation, I will show you how it was paid, while the interest has not been paid in money to Mr. Sweet. He told Governor Butler that he would pay it, and charge it to him on his account because there was a deal between them, or else he never would have reported it paid; and by his report he sets forth that he did pay it under that understanding. Governor

Butler says that the State Superintendent last year, at the time of the apportionment, apportioned that interest around among the different school funds.

We have been charged here of taking advantage of all the technicalities of the law. We have done nothing more than what was our right to do, in defending this case. It is just as natural for me to get on the side of the man that is down, as for the the counsel for the State to be on the side of the man that's on top, and I am glad that is my nature. When we said we would file the exceptions to these charges Governor Butler told us that he was no lawyer, but he wanted this case tried upon its merits, and he insisted on it, and we had to file them as a part of our answer, and when we came in here and asked that they be heard first, it was to save time, for we thought if these things were passed upon first it would lessen the number of charges and specifications, and of course shorten the testimony and the trial. We had no question that you could try him for acts done prior to his present term of office. But Governor Butler objected to taking any of the benefits of the law. "for," says he, "I want the people of this State to see your answer for me, and then see their testimony. I want it to go before the public. I want to put it into every precinct, and the lap of every man and woman in this State, that they may see what the merits of the case are, that they may be able to put the lie upon these public rumors that have been circulated over the State against me." And now, Senators, I thank you very much for your attention, for I must confess you have listened to me with more patience than I expected. I could pick out men here who would pull on the rope to hang Governor Butler. Let such men keep away from me. I want to deal with honest, square, and upright men, and I believe that to be the kind in this body, and that you will give him credit for all that he is entitled to; and remember he is entitled to every reasonable doubt in your minds that the law gives him. There is no man within the sound of my voice that will not say that the very moment

that money was put into the hands of Nelson C. Brock it was in the Treasury. Let me say to you that if Governor Butler is convicted upon the testimony of these two men, so help me God, so long as I live in Nebraska, I will stand by him and be his friend. Because if we convict a man upon the testimony of men who have shown themselves to be corrupt and interested, largely interested, in his conviction, no man is safe in the community in which he lives. Will the intelligence of the people of the State of Nebraska countenance Treasurers and Deputy Treasurers going upon the witness stand and swear themselves villains and violators of the laws and pass them by unnoticed, and on their testimony convict a good man. I do not want to persecute anybody. I hope Sweet and Brock may repent; and if they don't fix up with their friends and neighbors, and the State of Nebraska, may God have mercy on their souls.

It is wicked, and a burning shame to convict a good, fair man, who has not taken a dollar from the State, as proved by the witnesses, notwithstanding the evidence of two men who proved themselves liars, and liable to conviction. Senators, I have distrusted my own ability in this case, and entered upon it with a good deal of feeling and anxiety, to defend a man charged with so grave an offense, involving so much—not money, not property or liberty, but reputation, which is worth more than all the others combined. What does the villain, who has no reputation at stake, care about being put in prison, except for the mere punishment he receives? Nothing at all. If you would tender to him a year's imprisonment, and fifty lashes, or pay a fine of \$100, he would take the imprisonment and lashes, two to one, and keep the money.

The distinguished counsel, judging other men, to a great extent, by his own ideas of finance and propriety, regards this Butler trial a little in the same light as the case I have just put, and don't seem to realize why it is that the accused is making this desperate struggle to defend himself—thinks that the accused is like himself, drifting towards the little end of nothing,

and only waiting till Gabriel blows his trumpet that he may be relieved of the cares and sorrows of this vain world. But he is much mistaken. The defendant is in the prime of life, with a vigorous mind and constitution, and with scores of friends to stand by him with their sympathy and their love. I wish in my heart I could say the same for my friend, the counsel for the State. Five or six years have rolled around, and not a case in the courts of the State has the gentleman had to represent, but in the language of Saxe "has died for the want of a cause;" but by a twist of the wrist, breaks out in this impeachment cause, the most important in the State, but how he came there no one is able to tell, while many are anxious to know.

Now, Senators, I trust you will take this case into your own hands. Consider its importance to the accused—to his family, and to his descendants after him. Consider that we are all mortal, and liable to get into trouble. We don't know who will be the next one arraigned before you. Let us be merciful and lenient to each other. Let us remember the first teachings and example we ever had bearing on that subject, as laid down and recorded in the Holy Scriptures—by the way, Manager Doom, do you ever read the Bible?

Manager DOOM. Yes, sometimes.

Mr. REDICK. You will then recollect the first illustration of pity; of a noble heart; of a feeling which has run through almost the entire human race, and which distinguishes us from the brute creation. You will find that when an innocent man was being hung upon the cross between two thieves, and when his persecutors were standing around that wicked and dreadful scene, crying out, "Crucify him! crucify him!" what did he say? "God forgive them they know not what they do." The Governor has from the beginning manifested a spirit of forgiveness toward all his enemies and persecutors. He is ready to shake hands with them all; ready to meet you, talk with you, and take you to his home and treat you like neighbors; and you are here some of you asking that he may be impeached, dishonored and disgraced. Trusting, Senators, what I have said

has done David Butler no harm, if it has done him no good; trusting that I have not acted dishonorably in this case, in any way, and that my record will bear me out, I submit the case into your hands, having full faith in your integrity and ability, and that you will do the accused and the State fair and impartial justice, and with that I shall be content.

Senator HASCALL. I would suggest that Manager Doom submit his remarks.

Senator THOMAS. I move that the Senate, sitting as a Court of Impeachment, adjourn until 9 o'clock A. M. to-morrow.

Mr. MARQUETTE. Manager Doom has a short speech he desires to deliver, and—

Senator THOMAS. We would be willing to allow the counsel to proceed this evening, but several Senators are unwell.

Senator HASCALL. I do not think it will take a long while, and it can be left till to-morrow.

The PRESIDENT. As many as are of opinion that the Court adjourn will answer "Aye," those of contrary opinion, "No." The ayes have it, and the Senate stands adjourned till to-morrow morning at 9 o'clock.

#### Eleventh Day's Proceeding.

The Senate, sitting as a Court of Impeachment, was called to order at 9 o'clock. Upon the roll being called by the Clerk, all the Senators answered to their names.

Manager DOOM, in accordance with previous arrangement, presented his argument in writing.

#### ARGUMENT OF MANAGER DOOM.

##### MR. PRESIDENT AND SENATORS:

I thank you for the courtesy shown in permitting me to present an argument in this case. I should not trespass upon your patience, with the very

limited time given for preparation, had it not been for the urgent solicitation of my associate managers. I approach the subject now with great reluctance, believing that the magnitude of the interests involved require a mind accustomed to the sifting of evidence, and capable of exposing the subtle sophistries by which the very able counsel for the respondent has endeavored to envelope this case. I have no hesitation in saying that my ability to expose those sophistries, and unravel the web of mystification, is far inferior to the talent displayed by the learned and profound Briggs; the gifted, irrepressible, and indefatigable Redick; and the eloquent Marquette, in weaving the same. But relying upon the justice of our cause, and your honesty and intelligence, we cheerfully submit the case, fully satisfied that you will weigh well the evidence, examine the law, and do justice.

Trusting that the imperfections of the advocate will not prejudice you against the cause. I will briefly review a few of the points which, in my opinion, have been clearly established by the testimony. Permit me to call your attention to a fact which has been painfully apparent during the progress of this trial. At the outset I protested against this Senate being governed by the technical rules which obtain in ordinary criminal courts. I begged you not to fetter us, but leave us the privileges which the people have claimed from time immemorial in impeachment trials. Senators, I say it not in anger, but in sorrow, you were misled by our wily antagonists. They too well knew the advantage to them, and the disadvantage to us, and procured rulings and decisions which bound us hand and foot, causing us virtually to dismiss many articles, which I honestly believe, had you dealt with us liberally and according to precedent, we could have proven beyond a doubt. I refer to this now to warn you against the insidious wiles of our opponents, who, while they are all that good citizens should be in the private walks of life, here are lawyers—bent on, and in duty bound, to acquit their client. I beg you, in the name of the people, whose complaints have reached you from every city, town, and farm, to steel your hearts



against their eloquent but deceitful pleadings; your minds against the plausible sophistries which will be poured into your ears. Decide this case according to the dictates of your own clear heads and honest hearts.

The House of Representatives have adopted, and required us to prosecute before this honorable body, sundry articles of impeachment. To the evidence produced in proof of these articles I desire briefly to call your attention, earnestly trusting that your memory will supply many important points which, from my inexperience in arguing before courts, will escape my attention.

The first article recites the fact: as admitted by respondent, that Governor Butler was authorized to, and did, in the spring of 1869, collect what is commonly known as the five per cent. fund, amounting to the sum of \$16,881.26. The specifications charge as follows:

**SPECIFICATION 1st.** That having said sum of \$16,881.26 under his control and subject to his order, he, the said David Butler, Governor, as aforesaid, did corruptly and unlawfully neglect and refuse to pay the same into the Treasury of the State of Nebraska; and from the time said money was so under his control, and subject to his order, to the time of exhibiting these articles, has so neglected and refused to pay the same into said Treasury, whereby said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of a misdemeanor in office.

**SPECIFICATION 2d.** That having said sum of \$16,881.26 under his control and subject to his order, he, the said David Butler, Governor, as aforesaid, did, during the month of May, A. D. 1869, corruptly and unlawfully intermingle the same with his own private funds, and use the same for his own personal benefit. Whereby said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of a misdemeanor in office.

**SPECIFICATION 3d.** That having said sum of \$16,881.26 under his control and subject to his order, he, the said David Butler, Governor, as aforesaid, did, during the month of May, A. D. 1869, unlawfully and corruptly

intermingle with his own private funds, and use for his own private benefit, a part of said money, to-wit: the sum of \$1,881.26, whereby said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of a misdemeanor in office.

**SPECIFICATION 4th.** That having said sum of \$16,881.26 under his control, and subject to his order, he, the said David Butler, Governor, as aforesaid, did cause the same to be deposited in the banking house of James Sweet and Brock, in the city of Lincoln, Nebraska, on the 25th day of May, A. D. 1869, and from thence, from time to time during the years 1869 and 1870, unlawfully and corruptly draw out, handled, employed, and used the same as his own private funds, and for his own private use and benefit; whereby the said David Butler, Governor of the State of Nebraska, then and there committed, and was guilty of a misdemeanor in office.

We offer, in proof of the above specifications, the testimony of James Sweet, who was State Treasurer at the time this transaction is alleged to have taken place; and up to the meeting of this Legislature his testimony is direct; no evasion or equivocation. He tells you positively that the money was never deposited in the State Treasury. In support of Mr. Sweet we offer you the testimony of Nelson C. Brock, the deputy State Treasurer—also the books of the Treasury Department, and the books of the banking house of James Sweet and Brock; who each and all, in the most emphatic manner, testify that the money was never in the State Treasury, but was controlled and used by David Butler as his own private funds. The respondent alleges in his answer—but unsupported by other evidence—that he deposited the money, and afterward borrowed the same. Thus we have a question of veracity between Governor Butler on the one hand, and James Sweet and Nelson C. Brock on the other.

I understand that the credibility of a witness is measured, to a great extent, by the inducements afforded to testify. That is, if a man swears to certain facts which it is clearly to his interest to have established, it is some ground for doubting the truth of his

testimony. But if a man's evidence reveal a state of facts contrary to his interests, or, as in this case, it is shown that his interest would be subserved by pursuing a different course than he did, it is the very strongest proof that his testimony is true. Apply this rule to this case. Has the defense attempted to show the slightest reason, or the most remote benefit to be derived by either Sweet or Brock, in permitting Governor Butler to use the money in question, instead of placing it in the State Treasury? Not in the least. In all the evidence before you, not a word has been uttered casting a suspicion upon the purity of this motive, or intimating any benefit derived by them. But the able counsel (Mr. Redick,) tries hard to distort and mistify the evidence, to impeach those witnesses; but your good sense will perceive the fallacy of his reasoning. Is there no means of deciding this question? Are there no facts or circumstances which convict one or the other of those parties of being mistaken? I think there are; and will, as briefly as possible, allude to some, deeming it sufficient, merely, to call your attention to the points, trusting to your good sense to make the proper application.

Does not the law prescribe the course to be pursued in depositing money in the Treasury? Section 20, of Chapter 4, of the Revised Statutes, says: "The Treasurer shall give duplicate receipts, under the seal of his office, for all sums of money which shall be paid into the Treasury, and the person receiving the same, shall deposit one of them with the Auditor, who shall credit such person accordingly, and charge the amount to the Treasurer." Will it be pretended that the Governor of this State, after one or more years' service, did not know the provisions of the law, which clearly pointed out the mode of procedure? If he deposited that money in the Treasury where is his receipt? Where is the receipt which should be in the Auditor's office? Mr. Gillespie, (the Auditor,) swears that no evidence of such deposit ever came into his office. Again. By an Act of the Legislature, approved by Governor Butler himself, on the 15th of February, 1869, (See laws of 1869, page 161,) it is provided,

"That the Treasurer shall, on the last day of each month, make a full statement, under oath, of all the moneys which have come into his hands, and file the same with the Auditor." It is made the duty of the Secretary of State, to examine the funds in the hands of the Treasurer, between the 3d and 6th of each month; and, if he find the same to correspond with the statement filed with the Auditor, he shall certify, under oath, to the fact, and file his certificate with the Auditor. Now, mark you, Senators, Section 4, of said Act, provided:

"That if the said treasurer shall fail to exhibit to the Secretary of State, when he shall be called on therefor, any part of the public funds which may have come into his hands as such treasurer, \* \* \* then in that event, the office of the State Treasurer shall become vacant, and the vacancy shall be filled as provided by law."

Is it reasonable, that a transaction of such magnitude would escape the notice of both Auditor and Secretary of State? or, that if this deposit had been made honestly and openly, Governor Butler would not have had some knowledge of the fact, that it was not on the Treasurer's statement?

Is it reasonable, that careful business men as James Sweet and Nelson C. Brock are known to be, would lay themselves liable to the penalties announced against them by the act just recited; as well as those declared in Section 103, as found on page 214 of the laws of 1869, which says, such offence "is hereby declared to be a high crime and misdemeanor, and upon prosecution, trial by indictment and conviction thereof, before any court of competent jurisdiction in this State, such County Treasurer or other officer or person, shall be sentenced to imprisonment in the penitentiary, and kept at hard labor for a term of not less than one year, nor more than twenty-one years; and also to pay a fine equal to double the amount of money."

Without any advantage to themselves, but simply to permit Gov. Butler to have the use and benefit of the money, and they run all the risk, for it is not pretended that Sweet and Brock ever used the money for

their benefit, but it is in evidence that from the very day, or a few days after the money reached Lincoln, that it was in the full possession and control of David Butler. That is clearly proven by the fact that those pretended mortgages are dated on the 25th of May, 1869, only two to five days after Brock returned with the money. Now does any sane man think that either Sweet or Brock would run such risks for the pleasure or honor of keeping this money on hand (for they did not use it) for those few days,

Had they been so regardless of their oath and their duty, the fact could not have been concealed from Governor Butler. Was it not his duty to have executed the law according to his oath of office, and declared the office of treasurer vacant; prosecuted Sweet and Brock, and appointed another treasurer? Such was his duty. Did he discharge that duty? He did not. Turn which way you will, you cannot avoid the conviction that David Butler committed a misdemeanor in office.

The question recurs—did Sweet or Brock derive any benefit from this money? Not being in the State Treasury. Far from it, on the contrary, they were losers to a large amount, for it is in evidence before you, that they used the State funds in their banking business. If they had once placed this money in the Treasurer's books, Gov. Butler, nor any one else but themselves could have used it until drawn out of the Treasury according to law. It is needless for me to take up your time to show the advantage to them of having near \$17,000 to use in their business, free of interest. But all the evidence goes to show that instead of Sweet and Brock using this money David Butler used and controlled it for his own private benefit. The books of Sweet and Brock, as exhibited and shown by McConnell, (their witness,) prove that the money was placed to David Butler's credit, by issuing to him certificates of deposits for \$15,000—and placing the balance to his account. Those books also show, by the acknowledgment of the same witness, that Governor Butler checked upon this money at his pleasure, drawing it all out in a short time, so much so

as not to entitle him to any interest. McConnell also tells you, (although unwillingly,) that David Butler's account was overdrawn something over \$16,000, in May 1870, when he left the bank. He retained the certificates of deposits until September 12, 1870, when they were returned to Sweet and Brock, with David Butler's name in his own handwriting endorsed upon them. You cannot doubt the evidence of those certificates, although the Counsel has endeavored to create a doubt in your mind about their issue at the time as stated on their face. You examined the stubs from whence they were taken—there they stand in regular order—date and number—just as related by Brock. And as McConnell was forced to admit, in such connection, as left no doubt of their correctness. You will remember with what a flourish of trumpets John L. McConnell was placed on the stand by the defense. How he swore that those certificates were antedated; swore that no trace of this money could be found on the books, for Mr. Sweet, and himself, examined carefully; swore that when he left the bank David Butler had not overdrawn his account. But alas! "the best laid schemes of men and mice aft gang a-glee." When we produced the books, this inveterate swearer finds everything just as stated by Mr. Brock; even the fertile genius of the volatile, and inexhaustible Redick fails him. Witness and Counsel are both dumb-founded as Mr. Brock, (who was requested to assist the witness, whose knowledge of books—especially those books—had suddenly become quite limited,) pointed out item after item, entry after entry, all in regular order, and connection. Poor McConnell acknowledges that he was mistaken, and that Brock was right.

Now, Senators, to return to the proposition. Do you find in all this transaction that Sweet and Brock had any inducements? Have they made anything by the transaction? Was there any inducement for them to refuse to put this money on the Treasurer's books, and to allow Governor Butler to use it, as he did, if they had considered it State money? They made nothing; they had no such inducements. Then why, in the name of common

sense, should they perjure themselves? No, Senators; they told you the truth. That money was never in the State Treasury; but, as charged, was used by David Butler as his own private funds.

You are told that Governor Butler borrowed this money. Who did he borrow it from? The law makes the Governor, Auditor and Treasurer a board of commissioners to loan. Have they produced any certified record of the proceedings of that board, or of either member of it? None at all. The respondent tells you somewhere—either in his answer or in a stump speech—that Mr. Sweet loaned it to him. Mr. Sweet tells you positively that he did not loan it. If this had been a straight forward transaction, why was not application made to Mr. Gillespie (the Auditor and Land Commissioner) whose office was in the same building with Governor Butler? Why did not he hear of this loan? Why was not he consulted? Why should this loan be attributed to Mr. Sweet, who was not here—futile as the counsel for the respondent are in devices and explanations, they offer no reason—even the private secretaries, editors, ex-officials, and hangers on in general, who have swarmed around these halls—(perhaps warned by the fate of poor McConnell) are silent. Not a particle of evidence is produced that any of the Board ever heard of or agreed to this loan, unless it be apparent that David Butler kindly consented to loan this school fund—to David Butler. When was this loan expected? It is not in evidence that any one heard of this money before the 15th or 18th of May, 1869, when Brock was sent to Omaha for it? Only a few days after, on the 22d, you find Governor Butler in full possession. It is also in evidence that Mr. Sweet was not in Lincoln, neither was Governor Butler in Nebraska City, where Mr. Sweet was. Is it not strange that if Governor Butler honestly desired to borrow this money, should say nothing to Mr. Gillespie, he who had full as much authority as Mr. Sweet, and could have been found by simply going down one flight of stairs. It is in evidence that he never heard of this loan until the fall of

1870. This question assumes importance when we consider that if Governor Butler arbitrarily took or kept possession and used this money one day or one month without authority, or in violation of law, he is just as guilty of a misdemeanor as alleged in the specifications, as if he had kept it ten years. Fortunately, we are not without evidence on this point, to which I ask your careful attention. Governor Butler alleges that he borrowed this money, acknowledges that he received it in May, 1869, and had the full use and possession from that time, and says that he secured the State. He offers, in support of that theory, nineteen mortgages. Those mortgages are dated May 25th, 1869, were acknowledged December 28th, 1870, and recorded January 7th and February 1st, 1871. Now, Senators, put the most favorable construction you can upon those mortgages you are forced to admit that for the period of eighteen months the State was without a particle of security. More than this, in all the offices and departments of the State government there was not a scratch of a pen to indicate that David Butler had received one cent from the State, or owed it anything. Those mortgages, so far as this impeachment is concerned, are a fraud. They are in reality the most damning evidence which could be brought against Governor Butler, for they show on their face that they were manufactured on the 28th day of December, 1870, and up to the hour when they were introduced in evidence here, they had never been in the possession of any officer appointed by law, to be the custodian of the State securities. Governor Butler kept them himself. And I verily believe that had it not been for the spirit manifested by this Legislature, those mortgages would never have seen the light of day. I was amused, (I mention it here to show how artful our friends the counsel for respondent are) when enquiry was made for the bonds, which should accompany the mortgages. They spoke of getting them from the State Treasurer. Mr. Koenig, the Treasurer tells you that he never saw those bonds until put into his hands here on the witness stand.

I think that I have clearly established the fact that no law was ever made by any party or parties, authorized to represent the State. And that if you admit those mortgages (the only proof) as evidence of the State being secured, that for over eighteen months, during which time David Butler used and controlled this money, that there was not the least appearance anywhere, of anything like security.

By reference to the joint resolution quoted in Article I of those charges, you will perceive that Governor Butler was not authorized to receive the five per cent. fund, but simply to use his influence to have the same "paid over to the Treasurer of State at as early a day as possible." It was his duty to have had the treasury draft made payable to the order of the State Treasurer instead of himself, by so doing he would have fulfilled the law and discharged his duty. But by so doing he would have filled the State Treasury but not his own pocket.

The counsel for the respondent have at various times, and in various ways (but not by straightforward testimony) referred to a mortgage prior to those now in evidence before you. The inference sought to be conveyed is that the prior mortgage is the balsam to heal all the wounds inflicted upon the violated laws. Where is that mortgage? why has it not been produced in evidence, or why has not some witness been able to testify something definite? None of all the Secretaries, Editors, Attorney Generals, or Adjutant Generals, know anything of this valuable document, except the saintly Gere. Now what are the facts about that mortgage? Simply this: that when in the fall of 1870, a storm was gathering over David's devoted head, it had been rumored that he had collected the five per cent. fund. The election was drawing near, and he sends for Brock, in September, 1870, and wants to secure the State. Then fixes up this famous mortgage and wants Brock to perjure himself by anti-dating the acknowledgment, which Brock refuses to do. Gere tells you on cross examination, that Butler told him in September,

1870, that Sweet had promised to draw the mortgage about a month before. Thus you see that Gere (their witness) confirms Brock and Sweet, and you discover that the first intimation anybody had of this court plaster, was not earlier than in August, 1870.

Just here permit me to call your attention to a fact which establishes one of our specifications. The witnesses for the defense, "know-nothings" as they are, disclose this fact: that this precious prior mortgage was only for \$15,000; all admit that. The Governor acknowledges that in May, 1869, he received \$16,881.26. Now, Senators, it is for you to enquire what became of the balance, \$1,881.26. Perhaps his Excellency thought that too small a sum to be worth including in a mortgage. If you agree with him, of course, on that specification your verdict will be "not guilty," but if you desire to establish the principle that officers shall be held to a strict accountability for their actions, whether the amount involved be one dollar or a million, you will follow the glorious example set by Massachusetts, who impeached one of her most prominent citizens for exacting only \$11.40. One example was sufficient, and for over fifty years, Massachusetts officers, if they contemplate violations of the law, are warned by the fate of Prescott, whom even the eloquence of Webster could not save. Senators, can it be possible that the example of Massachusetts shall be lost upon us; that in Nebraska, Redick can acquit a man who has violated law time and again, taking thousands of the children's money without authority, while Daniel Webster could not, before a Massachusetts Senate, clear a man for one violation of law, to the amount of \$11.40. God forbid such an inscription upon the history of this fair young State. To another fact, having material bearing upon this case, I call your attention. If this \$16,881.26 was considered by Butler, and known to Brock, as State money, why did Brock charge, and David Butler pay the sum of \$33.75, for bringing the money from Omaha to Lincoln? This fact was testified to by Brock, and when the books were before you, the item

was pointed out. The counsel and their witness, McConnell, by their silence, admitted its truth. If Governor Butler had intended it thus to be considered, and known to be State money, confident I am that he would have made the State pay the expense. I notice no such liberality in any other of his dealings with the State. For instance, as Commissioner of Public Buildings, &c., he charges the modest sum of \$3,560, which is his per diem, for 356 days in each year, which proves conclusively, either that David Butler is the most industrious Governor any State has ever been blessed with, or that he has charged for a number of Sabbath days, which he did not devote to the service of the State. Senators, this one item, in my opinion, speaks volumes. I consider that it proves Nelson C. Brock's testimony to be "true as holy writ." Suppose that we admit that Governor Butler did deposit the money in the State Treasury. How did he get it out? The law is very plain on that subject. Did he comply with the provisions of those laws? It is not even pretended by the defense that he did. Every witness, all the circumstances, all the records, go to show that he did not. Are you, Senators, prepared to sanction a deliberate violation of the law, and by that officer, whose particular duty it is, whose oath of office requires that he faithfully execute the law?" Take either horn of the dilemma, and Governor Butler stands before you convicted of a grave misdemeanor; and in the name of the people, we demand that you remove him from office. The counsel for the respondent endeavored to mislead you in reference to the time Brock returned to Lincoln. It is only necessary to remind you that Mr. Brock was not certain as to the day. But McConnell (their witness) swears that Brock returned on the 22d. If so, the books and McConnell agree for once, and there is no difficulty, as the money was placed to Butler's credit on that day. But Governor Butler admits it to be in his possession from the 25th, for on that day he dates his mortgages. Several very trivial points are raised by the counsel: many witty allusions have been made, some at my expense, which I enjoyed very much, as I like

a witticism. But bear in mind, Senators, neither wit or abuse are arguments. Those men are lawyers; no responsibility rests upon them, except their duty to their client. Upon you are fixed the eyes of the people of this State. Upon you and your decision rests the future weal or woe of this State. Upon you will rest the blame if you permit your judgments to be misled. You are establishing precedents, which govern for time to come. The people will read this testimony, and form their opinion. I sincerely trust that you will consider well the law and the facts. It would fill volumes to follow all the tortuous windings of the counsel, therefore I hasten on. Senators, in my opinion, the question resolves itself into this: If James Sweet and Nelson C. Brock, corroborated as they are by the books, (both of the Treasurer, and of Sweet & Brock) mortgages, admissions, and other circumstances, tell the truth, David Butler is guilty as charged. Either David Butler failed to deposit that money in the State Treasury, or James Sweet and Nelson C. Brock are perjured men. Not only that, but by neglecting to place that transaction upon their books, they have laid themselves liable to all the pains and penalties provided by your statutes. Is it reasonable that intelligent men would place themselves in such a situation, and without any prospect of gain? I appeal to your common sense. Is it reasonable? No, Senators, the crime of perjury rests not upon their souls. They have told you the truth. They have done their duty; refusing to violate their oath of office. They come here telling you a plain, straightforward story, which convicts David Butler. For this they are denounced as all that is vile. I beg you, Senators, to consider well before you give your verdict. If that verdict be "not guilty," as to Governor Butler, by the same words you pronounce a verdict of "guilty" upon James Sweet and Nelson C. Brock of perjury and malfeasance in office, consigning them and theirs to the lowest depths of infamy. Your decision will stand as a warning, in time to come, to all public officers, not to thwart the will, however criminal or injurious it may

be, of an overbearing or corrupt Governor.

Gentlemen, the law of impeachment has been most ably expounded to you by the counsel for the Managers, [Mr. Estabrook.] Permit me to add my feeble testimony to what has already been said by him. This is not a criminal court. Your decision does not affect the life, liberty, or property of the respondent. It is an inquest of office, to ascertain whether David Butler is a proper person to hold and exercise the powers of Governor of the State of Nebraska. The counsel for the respondent would convince you that he should have the benefit of every doubt. Such is not the case. If a public officer discharges his duty as laid down by the law there can be no doubt arise. If that officer, from corrupt motive, incompetency, or other cause, violates or fails to comply with the law, to an extent to create a doubt of his honesty or capacity, it is sufficient ground of impeachment, and the people have the right to the benefit of any doubt.

Senators, we have shown beyond a doubt

1st. That David Butler collected the five per cent. fund, amounting to the sum of \$16,881.26.

2d. That the money was not deposited in the State Treasury, as the law directs.

3d. That David Butler controlled and used that money as his own private funds.

4th. That up to this hour the State has not been secured in the manner provided by law.

5th. That no disposition was manifested to secure the State for nearly eighteen months after the money was received.

All of which we claim to be misdemeanors in office; and in the name of the people of the State of Nebraska, whose servants we are, we demand the impeachment of David Butler and his removal from office.

Mr. President, under other circumstances I should have been glad to call your attention to the evidence produced in support of other articles; but the length to which I have already extended this argument, knowing as I do that the able counsel for the

Managers [Mr. Estabrook] has, and my associate [Mr. Manager Porter] will address you upon those charges and specifications, I forbear to inflict upon the Senate any further argument.

But, Mr. President and Senators, in taking leave of this subject, permit me to say, and I feel sure that you will bear us witness, that the Managers have not prosecuted this impeachment in any spirit of persecution, feeling no malice against the respondent. We have earnestly sought to do our duty, and produce all the testimony we could command throwing light upon the subjects under consideration. How well we have succeeded it is for you by your verdict to say. I leave the case with you.

Manager HUDSON. I respond "Amen" to the argument of Manager Doom, as it exactly expresses my sentiments.

Senator BROWN. Mr. President: I move that the Senate, sitting as a court for the trial of the impeachment of David Butler, Governor of the State of Nebraska, take a recess of fifteen minutes.

The motion was carried.

After the recess expired, the Senate was called to order, and Mr. Marquette took the floor, being the next speaker.

#### ARGUMENT OF MR. MARQUETTE.

#### MR. PRESIDENT AND SENATORS:

The interest which has been taken in this case, and the importance which the Managers, as well as the counsel, attach to it, and its real importance, causes me to feel a distrust in my ability, such as I have never felt before. I shall first endeavor to answer the learned counsel upon the points of law advanced by him; but, in the first place, I desire to ask the attention of the Senate to the fact that at the outset we claimed that the offenses charged against the respondent should be limited to his official acts. The Managers in other cases of impeachment manfully admitted this to be the correct view, but here they claim everything.

And it seems that the learned counsel for the Managers deem it necessary, in order to convict, to maintain the following propositions of law:

1st. That respondent may be convicted upon any act or misconduct, whether it is official misconduct, or not.

In order to maintain this proposition he endeavored to show that the common law of England is the law by which you are to be governed.

2d. The Senate need not, in order to convict, find criminal intent, or even corrupt conduct, in respondent.

In reply to these propositions of law and theories of the prosecution, we maintain the following:

1st. That the old common law of England is contrary to the genius of our institutions. That in this country the object of impeachment is to get a person out of office, where the people, or no other power, has the right to remove him.

2d. That under our constitution this is a criminal proceeding, and is limited to *official acts*.

3d. The Senate must find respondent guilty of a crime, or at least of a corrupt motive, and that beyond a reasonable doubt before they can convict.

4th. That the decision of the people in respondent's favor at the late election upon all charges which were fairly submitted to them, is final, and cannot be reversed by the Senate.

The law that we shall hereafter refer to shall be for the purpose of overthrowing the law brought forth by the Managers, and for the purpose of supporting the above proposition, which we lay down as the law to govern this case.

Upon the first proposition—1st, That the old common law of England is contrary to the genius of our institutions; that in this country the object of impeachment is to get a person out of office, where the people, or no other power, has the right to remove him.

I read from Rowle on Constitution, p 228: "We may perceive in this scheme one useful mode of removing from office him who is unworthy to fill it, in cases where the people, and sometimes the President himself,

would be unable to accomplish that object."

2d. That under our Constitution this is a criminal proceeding, and is limited to *official acts*.

In our own Constitution, under the head of "Declaration of Rights," Sec. 8, we find the following language: "No person shall be held to answer for a *criminal* offence, unless on the presentment or indictment of a Grand Jury, *except* in cases of *impeachment*." Showing clearly that under our Constitution it is classed as a criminal proceeding. The 29th section of said Constitution, under the head of "Legislative," as clearly limits the office to *official acts*. You will perceive that the wording is the same as the Constitution of Massachusetts, in which it was held in the trial of Judge Prescott that the Constitution limited the offences to *official acts*. This point is quoted by Lawrence, in his brief. See Vol. 1, Johnson trial, page 125.

"What, then, are the legal import and signification of these terms? We answer, precisely the same as of crimes and misdemeanors; that they are in every respect equivalent to the more familiar terms that are employed by the constitution of Great Britain in its description of impeachable offences, subject only to the wholesale limitation which in this commonwealth confines this extraordinary method of trial to the official misdemeanors of public functionaries."

In the trial of Judge Hubbel, this principle of law now claimed by us and denied by the counsel for the Managers, was expressly admitted by the Managers in this case. See page 619:

"He is to be tried because he is unfit to hold his office, because his conduct tends to bring the office into scandal and disgrace. The power to impeach for corrupt conduct in office confines the impeaching body to acts growing out of and connected with the official duty of the officer. That corrupt conduct need not be criminal; that is, it need not be a violation of any known law, either written or unwritten. It is for the corrupt conduct. Every officer of the State, when he enters upon the discharge of his duty, must take and subscribe an oath or



affirmation to support the constitution of the United States, and the constitution of the State of Wisconsin, and faithfully discharge the duties of his office to the best of his ability. There is a solemn and impressive oath, as much the law of the land as any other part of the constitution; and before he enters upon the duties of his office he calls God to witness that he will faithfully discharge the duties of his office to the best of his ability. Well, now then, any unfaithfulness on the part of an officer—any partiality on the part of a Judge—any arbitrary exercise of judicial power—in fine, any conduct which tends to the manifest scandal and corruption of the administration of justice, is, by the very terms of the constitution, and by the oath which the officer takes, impeachable matter."

The counsel for the Managers gets his law entirely from what is known as "Lawrence's Brief." This brief was prepared by Judge Lawrence, of Ohio, and referred to by Ben. Butler, one of the Managers in the Johnson trial. It was gotten up for the purpose of convicting Andrew Johnson, but failed to do so. Ben. Butler failed to convict Johnson with it, and I think this Senate will require a little stronger "gruel" before they will be able to convict David Butler. Quoting law from a Manager in an impeachment trial, for the purpose of convicting the accused, is like taking the argument of a prosecuting Attorney for the law by which a prisoner is to be convicted. Mr. Estabrook quotes from Managers in former impeachment trials with the flattering hope that, in some future trial, his argument may be quoted as law. The gentleman will yet learn that, in this country, while hired prosecutors may distort, they cannot make law.

There is a great deal in Lawrence's Brief which is good law, and there is also a great deal which is not law. The counsel seems better fitted to quote that which is not law than that which is good law. The Senate must find respondent guilty of a crime, or at least of corrupt motive, and that beyond a reasonable doubt, before they can convict. There may be, and is, an exception to the first clause in this proposition; when, by the acts of

the officer, the existence of the State is endangered. A State, like an individual, is unlimited in self-defense. The right to live and exist rises above all other rights in a State as well as in an individual. But this principle has no application in this case.

Now, the learned counsel has referred to the Prescott case, and I desire to say that there are few cases that were tried better than that case, and it settled the matter of impeachment in the State of Massachusetts. For after its conclusion, Daniel Webster raised and condemned the action of the court that convicted him. Mat. Carpenter, one of Wisconsin's ablest sons, in a recent lecture before a law school, told the students if they wanted reliable law to go and read the decisions of Chief Justice Shaw, of Massachusetts. Shaw was the leading manager in the trial of the Prescott case. Now let us see the law that he relied on. I read from the Prescott trial, page 126: "Chief Justice Shaw quotes from Blackstone, as follows: 'A crime, or misdemeanor, is an act committed, or omitted in violation of a public law, either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors; which, properly speaking, are mere synonymous terms; though, in common usage, all crimes which are not penitentiary offenses are comprised under the name of misdemeanors;' " and he goes on and quotes from others of the same kind with this. In this case the respondent was convicted of the first article by a majority, but not by a two-thirds vote, for taking, I think, some \$40 of illegal fees, and from that day down, Massachusetts has quit the business of impeachment, and has since that refused to fasten upon any individual more than one punishment for the same offence. So you see the charge against Prescott amounted to a misdemeanor—a crime; all crimes are divided into felonies or misdemeanors. A felony is a penitentiary offence, and misdemeanors are all crimes that fall below that. A great deal has been said about the Hubbell case during this trial and it has been quoted from very largely by the counsel and the managers, so that perhaps it is not necessary for me to read any from it.

But I will say this, that Judge Hubbell, after a long trial, was acquitted on all the charges. The first charge was that of bribery, and the proof was this, that he had a very important case under consideration, on a motion to dissolve an attachment, and that the defendant came to him and he told him he would decide in his favor, and during the conversation, he asked the party to loan him \$200 and he did so, the party contending that it was not intended to loan it to him, but that it was a bribe. The counsel, in arguing that point, contended that although the party that offered him the bribe may have been corrupt, yet you have got to fasten the evil intention on Hubbell. It appeared that after a fuss had been made about it he called this person into his room and paid it back, but when the fellow left, the room he left the money on the table, so that he never in reality, paid it back. It was contended on one side, and I believe admitted on the other, that the proof must have been such as not to leave a reasonable doubt of his guilt, and that the court could not imagine his guilt. Upon the proposition that the evidence must show the guilt beyond a single doubt, I will read from the Constitution of our State. "Section 8. No person shall be held to answer for a criminal offence unless on the presentment or indictment of a Grand Jury, except in cases of impeachment." Showing that this is classed among criminal cases. We desired to bring him (the Governor) on the stand that the whole thing might have been made plain, but on examination it was found that this was a criminal case, and the law would not permit his testifying. I will read again from Sedgewick on Statutory Law, page 285, sec. 15:

"Laws which restrain natural liberty, as those which prohibit what is not of itself illicit, or which derogate otherwise from common right, laws fixing the punishment of crimes and offences, or penalties in matters of a civil nature which prescribe formalities which seem severe, etc.—ought to be so interpreted as not to extend their provisions to cases which they do not embrace."

And then on page 289, he says:

"The weak (hence the individual

arraigned by the State) ought to have the benefit of doubt; doubt ought to be construed in mercy, not in severity. A law may be rendered milder but not more severe."

It is so plain that the defendant should have the benefit of a doubt, that I need not make any remarks upon it. Hence you have got to believe, beyond a single doubt, that the respondent here is guilty of the offence as charged; but if there is a single doubt then you have to resolve that doubt in favor of him who is arraigned before you. Now, then, we come to the first charge. Let us see what law here is claimed to have been violated. The Governor is simply acting as an agent in the matter of obtaining this money. You, as a Legislature, passed this joint resolution, and I want to call your attention to the reading of it to see what was his duty under it:

"WHEREAS, There is donated to the State of Nebraska, five per cent. of the proceeds of the sale of the public lands of the United States, within said State of Nebraska, and,

WHEREAS, The same is now due to the State of Nebraska, therefore be it

*Resolved*, That the Governor of the State is hereby authorized and directed to bring the matter to the attention of our Representative and Senators in Congress, and request them to unite with him in endeavors to secure the same to be paid over to the Treasurer of State as early a day as is possible. And the Governor is hereby authorized to employ any other, and further assistance that may be necessary to secure that result."

Now what has he got to do? 1st. Bring this matter to the attention of our Representatives in Congress, and 2d. To unite with them to have it paid to the Treasurer of the State; that is all. Now then, this long argument here, with reference to depositing this money, does not come within the purview of that resolution. If he placed it into the hands of the Treasurer, he placed it where the resolution told him, and the arguments of the counsel in that respect only fasten crime on somebody else. The law was read by Mr. Redick, and I will not read it again. It says that the deputy shall

act as Treasurer in his [the Treasurer's] absence. Mr. Sweet did not live here, and being absent, the placing of that money in the hands of his Deputy placed it in the hands of the Treasurer. Now, I shall not dwell on those nice distinctions made by Nelson C. Brock, Deputy Treasurer and Banker, for from what I can understand from the evidence here, he was at one time Nelson C. Brock, Deputy Treasurer; Nelson C. Brock, Banker, and then again plain Nelson C. Brock. Now, the money being in his hands, we say it was in the hands of the Treasurer. The burden of proof is on them, and they try to get around that by Brock coming in here and saying that he did not know that it was State money when he received it.

Yet, in point of fact, it was in his hands. The whole case turns upon this proposition, whether Brock knew it to be State money or not at the time he got it. We delivered the money to him, and the burden of proof is thrown on him. But they say, in order to get around this, that they did not know it was school funds. It is presumed every man knows the law. Mr. Doom says so, and he is good authority.

Manager DOOM. I did not.

Mr. MARQUETTE. Well, if you didn't, somebody as wise and good did say so. It is presumed every one knows the law. Then Brock knew this money was at Washington; knew that the Governor was authorized to collect it and pay it to the Treasurer. Knowing that fact, when the Governor told him there was \$16,881 deposited in the First National Bank at Omaha to the Governor, common sense would have told him that was the State money. Taking it for granted that Brock is a truthful witness, I say his own common sense would have taught him this was State money, and he must have known it. The fact that the money was sent to the respondent as Governor would have taught any other man it was State money. The power of attorney which he insisted on was made out by the Governor as Governor, and was under the seal of the State. Why to the State? Now, is there any one, knowing he (Brock) had the right to the use of the State

money, and that this money was deposited to the Governor as Governor.—is there any one who supposes that Brock, who looks to No. 1, would not have made some enquiry as to whether this was State money or not? Men generally enquire for their rights. The power of attorney is given to the Treasurer, and Brock goes and obtains this money and places it right where all the other State money is put, in the Treasury. And both Sweet and Brock admit this fact. Now, gentlemen, right here, as Mr. Doom has dwelt upon this matter and referred to the deposits of public money, I will refer to it a moment myself. Section one of an act relative to the duties of the Treasurer, page 161 of the Laws of Nebraska, 1869, says:

"That it shall be the duty of the State Treasurer to keep constantly on hand the identical funds received by him from any source whatever, in his official capacity as Treasurer, until he shall pay the same out on orders or warrants drawn on the Treasury by the Auditor of the State, or until it shall be otherwise paid, as provided by law."

"They say we never deposited this money. Why? Because we did not fulfill the law. Whose duty is it to see that that law is fulfilled? "It shall be the duty of the Treasurer to keep constantly on hand the identical funds received by him," &c. Now, they went on and showed what was necessary to a deposit. I say the law did not require the Governor to make a deposit; and the only way he could make one, if he had the money, was to give it to the Treasurer. This law was made making it the duty of the Treasurer to do that; and we are not here to answer for the sins of Sweet and Brock. "To require the Treasurer to keep constantly on hand the identical funds." Hard pushed indeed, must be the Managers when they read law which convicts their witnesses of penitentiary offenses, in order to fasten a crime on the respondent. Yet that is the fact. Now, Mr. Doom warns you, in his opening, that you must look out for these wily lawyers. How he became intimately acquainted with them I do not know; but he says they are "a dangerous

set." Well, now, outside the practice of law, there are a few wily men left. A man, for instance, who gets up before a Senate, who is not a lawyer, although some of that body are, and reads the law in reference to the duties of the Treasurer, and says they are the duties of the Governor. When I get as wily as that, I will quit practicing law and run for the House of Representatives. This is the wily part of it. He tells us, and I desire to answer this in order to pay my respects to him, that there is a question of veracity here between Butler, Sweet and Brock. Well, that question can be easily decided. In one instance Sweet and Brock say one thing yesterday and another to-day. David Butler, when arraigned before the Central Committee, the people, and here before this Senate, tells the same story, now, once and forever. I thought when questions of veracity arose, the man who told the same story was in the right, and the man who told different stories, not entitled, by law, to be believed. As far as the question of veracity is concerned, we are ready to meet that. Now, he says that Sweet and Brock had no interest in this matter. Why these deposits, gentlemen? Sweet and Brock have got out this money; they said it was worth seven per cent. They got out two or three thousand. They had the use of this money for ninety days, without interest. Brock himself says they paid no interest. On the 1st of December, 1869, only \$7,000 of the \$15,000 was drawn out. All this time it was worth 7 per cent., and if they could fix up some arrangement by which, in any case, they could not be responsible for this money, but have the use of it for that length of time, and then at the end of that time put the responsibility on the Governor, it would be a nice speculation. *They did it.* I wonder if they had no interest in that matter. He says you must either convict Brock and Sweet of villainy and perjury, or convict the Governor. Now, it is not my desire to convict either of perjury. I am here to comment upon this evidence, and I will do it truthfully. If Sweet and Brock put themselves in such a position that perjury stares them in the face, that is their

look-out and not mine; but I suppose Doom, if he is their keeper, might solve that problem. Sweet and Brock say there has been quite a fuss about the school money. Sweet thought he had a right to loan it to Governor Butler, and I think so yet. It was simply a piece of carelessness that it was not secured. He thought it was all right to make the loan, and there was no responsibility upon him; but, bye-and-by, this clamor increases, and Mr. Estabrook writes and states that if the Governor placed this money in the hands of the Treasurer, the responsibility is upon Sweet and Brock for loaning the money, and they would have to pay this \$17,000. Now, possibly, we might ascribe good motives to them. Good men have shrunk sometimes. One of the disciples, Peter, when the clamor for the crucifixion of his Savior surged round him, denied his Lord and Master. I suppose the reason was because he did not want to be crucified. And we might say, in order to let Doom out, that the reason Sweet denies this now is, simply, that he might not wish to pay the \$17,000. It was no pleasant thing for Peter to think of being crucified, and it was no pleasant thing for Sweet and Brock to pay this \$17,000. So, you see, it might be simply a matter of backbone, as in Peter's case. Now, let us see how that evidence stands. Brock says he did not know whether this was the money or not. The question is, whether Brock knew it to be State money when it was delivered to him; and the only testimony is that Brock did not know it. Sweet says he knew nothing about it. I do not suppose you are going to convict respondent upon what Sweet did not know. Now, he knows nothing about this. Well, they say Brock does. Brock says he did not know whether it was State money or not. So he did not know a great deal. Now, then, they claim the books and these certificates are the evidence they rely upon. Gentlemen, here is a certificate of deposit. They say his books all tally with this. I do not believe any man before this Senate could be convicted upon the books of Brock and Sweet. The only evidence—of course the first three are not evidence—the only evidence in the case is the endorsement

of David Butler. Now, this might very easily have happened, and all been in accordance with the truth, of Brock knowing this money was there. There is one thing strange. If that contract was ever made by Governor Butler further than Brock told him after he had those certificates, there is one thing certain, that Brock and Sweet never lived up to their agreement, or else their books do not tell the truth. These set the interest at seven per cent. after ninety days. Now, if this was deposited on the 20th by Butler; if Brock did not know any better and supposed it was Butler's money, Butler would have a right to interest from that day. These three certificates, without Butler's name, are just so much waste paper. Brock deliberately intended to cheat Butler out of five days' interest, if this transaction be true, to begin with; or else this money Governor Butler had no right to in the world till the 25th. Gentlemen, that evidence was manufactured by Brock alone. Besides, he has never paid interest upon it. The books say he overdraw. Now, on December 31st, 1869, it shows only \$7,000 drawn out. Where is your interest? There is no overdrawing there. He don't draw it all out until the next September, 1870. All this time some of that money was there, and, according to contract, drawing interest. Yet Brock says he (the Governor) paid none. It shows this was not the contract, and, as I shall say, this was got up just like the books, and all the transactions in reference to the State funds, to evade the law. And does it take a wonderful stretch of imagination to arrive at that. Brock swears he handled this State fund for the purpose of evading the law. What do I mean by this? He says this money was deposited there. It might have been that shortly after the 20th and 25th, Governor Butler wanted to borrow the money, and, as Estabrook says, there was no law upon the subject; it was entirely under the control of the Treasurer, and he was responsible for it. Governor Butler might have said he wanted to borrow. A happy thought strikes this man Brock. He sees where he can evade the law and crawl

out, and he says "I will make no memorandum of this deposit as I made of the others. I will let the matter rest. I will issue these certificates at this time." Now, I believe, after looking at this matter, that these certificates were signed at the time he says they were signed. I believe these books show it; but Brock says, "I will have it fixed so that nothing on our books will show that we ever held this money, but will simply show these certificates. If Mr. Butler takes this money, he will have them; if he don't, I will have the use of the money without paying interest on it. I can evade this law, as I evade all laws relating to the State funds." This is the reason these certificates are issued. Senators, I ask you to look at this evidence. Can you believe this man Brock? He stands here contradicted by his own statement; he is contradicted by four witnesses. And what does the law say with regard to the credibility of such witnesses? I quote from Greenleaf on evidence:

"Section 462. The credit of a witness may also be impeached by proof that he has made statements out of court contrary to what he testifies to at the trial." [Greenleaf on Evidence, Part III.]

I will call the attention of the Senators to another thing with reference to this. Mr. Brock makes a statement as Deputy Treasurer, which is made under oath. He swears that this money was put in the State Treasury. He did this in the face of the commonwealth of Nebraska. Now he says that statement was made out at the request of David Butler. We bring two men here who say Butler did not see or hear of it until after it was made out, and that it was made out by Brock himself, and signed by Brock as Deputy Treasurer. Greenleaf says of a man of this kind, that you can place no dependance upon his testimony. Then we have these books and papers, which are about as reliable as Brock himself, because a man who will fix up a statement himself, and then go around and swear differently, will fix his books to suit himself, and although he may be young in years he is old in infamy. On the other hand, did Brock know at the time he went after this money, that

it was State funds? He says he did not, but we have seen the statement he made out, and if he told a falsehood when he made that, he cannot be believed now; he either told a falsehood then or now, hence I say by the rules of evidence, this man's testimony is not worthy of credit. McConnell comes upon the stand, and says that Brock knew this was State funds at the time he went to get it. Robinson says he made out a power of attorney. Brock insisted on having a power of attorney made by Governor Butler, officially, with the seal of the State attached. Robinson says that this was fully understood. McConnell tells the same thing. So we have here two witnesses swearing one way, and one witness swearing the other way. Gentlemen, the proof is conclusive that Brock knew this was State funds at the time he brought the money from Omaha, and I believe this rule of evidence to hold good in this case; that these men, Brock and Sweet, if we go according to their own statement, are guilty of innumerable crimes and offenses against the law. I suppose they feel something like the old whale in Aesop's fable. A large whale was thrown out upon dry land by the waves. As he lay there groaning and making a terrible fuss, he looked around, and saw another whale dying not far off, and then he died much easier. These men are branded as criminals, and if they can brand Gov. Butler with crime they will die much easier. It is necessary that evidence should harmonize. Unless a witness is impeached you have no right to say that he is swearing falsely. You have no right to say that Robinson swore falsely; you have no right to doubt McConnell's evidence. The fact that a power of attorney was given under the seal of the State and countersigned by the Governor, would tell any sensible man that this was State money, and all the facts go to show that Brock knew this was State money. Here are two men who swear positively that Brock knew this was the five per cent. school fund; their books point in the same direction, fixing it upon him beyond doubt. The only things that militates against this are the certificates and the books, which were

fixed up five days after the money came in, and were fixed up by Brock himself. I think myself that Brock knew at this time that Butler wanted to get a large amount of money, and he could use this sixty days without interest if he could get it fixed up.

Now, Senators, I think I have shown that the evidence here, so far as Brock is concerned, is not to be relied on. If you think it is right, you can make us responsible for what Kennard and Gillespie did as Commissioners with us, but for God's sake do not make us responsible for what Sweet and Brock did—we cannot stand that. If so, we want to stop right here, and plead guilty. They tell you we intended to procure this money for our own use, and not let anybody know about it, but we say that by the consent of the Treasurer, the custodian of this fund, we got it; and we show by these mortgages that it is secured, and we claim that the State will not lose a dollar, and will gain at least three thousand dollars. Sweet, was asked on cross-examination, if he was not asked to make out these mortgages, and he says he was; Brock says it was the carelessness of Sweet, and everybody knows that Sweet is a very careless man. They said that these mortgages were not recorded. We have an abstract showing that they were recorded, and the mortgages show the same thing. Mr. Estabrook says they are trash, but it remains for them to show that these are not good security, and that the State could not collect every dollar of it. Why does he say that these mortgages are not binding? Two Attorney Generals have said that the contract is good, and that the State could collect the whole of it. He says it was not binding because there is no statute for it. I desire to show you that the State can collect every dollar of this money. I read from Drake on attachments, page 150, quoted in the Missouri Reports, page 258, which is a general statute:

1. In case of a breach of the bond, B may maintain a suit thereon to the use of any garnishee who has been damaged.

2. Such a bond, although voluntary and not authorized by any statute, is good as a common law bond.

3. A bond with the same condition, made to the United States instead of B, is valid, although not executed in pursuance of any law, nor in connection with any business of the United States, nor any duty of the obligor to them. A garnishee may sue on such a bond, in the name of the United States, to his use."

And there are other cases referred to here, and there is another law which says a bond is binding, although voluntary and unauthorized by any statute. Now, it is claimed here that this is a mere voluntary act of Governor Butler's and don't bind him; but, sirs, any contract that is a good consideration is binding. Governor Butler is bound by these mortgages and Mr. Estabrook's children or any one else will not lose a dollar, but will gain the interest on it, which will school some poor children; and, gentlemen, lands are the best security, and especially so in a country that is settling up so fast. It was said in the opening of this case that the telegraph stated that the Governor of North Carolina had been impeached, and that by a strictly party vote, and it is stated here that the Governor is impeached by his own party. It is a burning disgrace that one of the noblest souls of the nation had been impeached by a party vote, and perhaps it is well, sirs, for you to mind that the same strife is often engendered by party feeling, as by opponents. They desire to crush David Butler perhaps that they may rise to his place. Mr. Estabrook says we have resorted to the little dodges of the law, and I think I know what this is argued for. They would have you believe a man is guilty, when charged with a crime, whether the evidence is sufficient or not. But, gentlemen, we claim that you must decide this case on the evidence before you, and choose between those witnesses, standing by the man who does not contradict himself. That will be the honest way. A false dodger may dodge it, but an honest man never could—the man that stands self-convicted before you cannot be believed. I come now to the fifth specification, which is a bribe said to be offered to David Butler by this same man Brock. He came into David Butler's office, and offered him \$500 if

he would secure the position of Treasurer of the Board of Regents for him. We have no doubt he made the offer, but it must be proved that David Butler agreed to his offer before you can attach any guilt to him. Some men have an impression very early in life that men can be bought, and I have no doubt that Brock is one of that kind.

But, gentlemen, they say he came in and offered that bribe. He does not say Butler ever agreed to take it; he does not say it was a bargain; but says he had an impression it was one. Now, some men, who are in the habit of selling themselves and buying others, get an impression very easily. Brock says he has an impression that it was a bargain. I hardly think you can convict David Butler on the impressions of Nelson C. Brock. I would not on the impressions of anybody, much less Brock's. Mr. Estabrook says when Brock said that he put on a "knowing smile, and the smile looked like as if he knew David Butler." You can hardly convict David Butler on the significance of the smile of Nelson C. Brock. In the light of that smile I read a different story. It said "Now, I have my enemy?" I read dark revenge. Smiles are frequently of that kind. Revenge was what he was after, and

"Revenge at first, tho' sweet,  
Bitter, ere long, back on itself recoils."

And so it was with Brock. Mr. Estabrook, in his speech, said:

"Vice is a monster of such hideous mien  
That, to be hated, needs but to be seen;  
Yet seen too oft, familiar with its face,  
We first endure, then pity, then embrace."

In this matter Governor Butler might have pitied the vice that came into his presence and offered him that bribe; he might have endured it; but he never embraced it. Because the proof is he went and worked for another man, and this hideous monster was not endured (embraced.) I hardly think you can find him guilty on that, especially on the mere impressions of Nelson Brock.

Next we come to Article 3—the one of the Chase warrants. Now, in this article it is said here that the charge is, that "he corruptly did intend and did convert one of the \$2,000 warrants he had issued to Chase, to his own use." Now, gentlemen, where is the

proof of any corrupt motive or intention to convert this money. Chase left here and told him to allow what he thought fit. He allowed him \$2,000, believing he will still remain Attorney General. That he intended to convert it to his own use what proof is there? A man that converts money does not tell the man to whom it is due that he has the money. It was a public transaction, and he could not have converted it. He said there was, or would be shortly, that amount due Chase. Respondent tells Chase he is going to Washington, and wants to enter Saline lands for the State; and I know he was there myself, and paying his own way; and yet my friend Doom here says he always charges. I have known him going two or three times to Washington City on State business, and never saw a charge made yet, although it cost him thousands to do it. Butler says, "For State purposes I may use some of this," and Chase says "All right." Afterwards Chase says there is something wrong about it, and he goes to Butler and tells him, and Butler says "If there is a mistake I will make it all right." This man Chase is inclined to kick up a little muss, because the Governor did not appoint him Attorney General; and he, of course, desired this to make the Governor a little trouble. Hence, he higgled over the matter and claimed more than the Governor would allow him, and the warrant was not lifted for some time. Whose fault was it? It was the men whom you elected to preside over your Treasury Department. I don't suppose there was any interest due. Governor Butler used the money in entering the Saline lands. I suppose he thought if he paid the money back it was all right. If he was wrong you have no right to suppose a corrupt motive where there is none proven. "If there is any mistake," Butler said, "I will correct it for the State." When he goes to correct it he thinks he ought not to pay interest on it. He had a right to that opinion. If interest ought to have been paid, Sweet, the guardian of the State, ought to have seen that it was done. So, you see, whenever a question of veracity arises your man [pointing to Doom] comes out second best. I think, Senators, you will not

vote "guilty" on an article of this kind. We now come to the 4th specification of Article 2.

Senator TUCKER. Mr. President, I presume Mr. Marquette will not get through for an hour yet.

Mr. MARQUETTE. It will not take that long, but if the Court would take a recess it would suit me.

Senator TUCKER. I would move we take a recess until two o'clock.

The Senate, sitting as a Court of Impeachment, then took a recess until 2 p. m.

#### Afternoon Session.

Senate assembled at two o'clock.

All the members answered to their names.

The PRESIDENT. If the Senate is ready the counsel for the respondent will proceed.

Mr. MARQUETTE then resumed his argument. He said—Mr. President and Senators, I left off at the 4th specification of Article 2. I see that this is the specification that charges a violation of the law in reference to the leasing of salt lands. I do not think the evidence in this case bears anything out of that kind. The Governor claims that in regard to this land there was a prior claim, to some extent, upon it, before the parties would agree to undertake to develop it; and I suppose it was a fact that the Governor had become responsible in case of loss, while he had no interest in the profits. Such was the risky undertaking, and I think the efforts made by the prosecution simply substantiate all the Governor has said on the subject. These persons had a prior claim upon it, and it appears, by the correspondence between them that there was, and he endeavors to get back a portion of this money the State itself would have to expend in order to develop the salt works. I find, by section 4 of the law under which he [the Governor] acted, that the Governor has a discretion in reference to leasing these lands:

"The Governor is authorized to



lease to any competent party or parties, any other saline lands belonging to the State."

Showing clearly that he had a discretion in the matter. I have no fears of a conviction on that article, and shall not detain you. I am not ambitious of making a long speech.

The next article is the 4th, where the charge is made that the Commissioners, by a contract with one Ward, the said Ward was to put in the foundation of the Asylum for the sum of \$18,000; that in this matter the Commissioner has overdrawn in that matter contrary to law. In reference to that, in my opinion, the law in reference to these matters is directory to those parties to whom the power was given, and if they exceed it, they may probably be the losers. And I will read what I think to be the law governing cases of that kind. There are certain matters that are called the substance of law; there are certain matters called "directory." The Governor, Auditor, and Secretary were made Commissioners, and the substance of the law was to rear those public buildings out of the town property and lands, that it might not cost the State one dollar. They were made the agents of the State, and if they held that power or any other agency, the principle might ratify the contract. But I am going to show you another principle, that as far as the building was concerned, the Commissioners run the risk, if they over-paid and were liable upon their bonds. I will read from "Sedgwick on Statutory and Constitutional Law:"

"When statutes direct certain proceedings to be done in a certain way or at a certain time, and a strict compliance with those provisions of time and form does not appear essential to the judicial mind, the proceedings are held valid, though the command of the statute is disregarded or disobeyed."

The great essential matter here was simply to build these buildings without making the people responsible for it.

"Neither the idea that statutory provisions may, to a certain extent, with impunity, be disregarded, nor the phrase that in these cases they are

treated as directory, is of recent origin."

The essence of this whole thing was that this building should be reared without direct taxation upon the people. Again:

"By a paving act, Commissioners were empowered to enter into contracts for the work, provided that no contract should be made for a longer term than two years, and the act then went on to declare that ten day's notice of proposals should be given, that the contract should specify the work, the price, and the time of completion, and should be signed by at least three of the Commissioners, and that copies should be kept."

This is what it says. So here it directs because it supposed then, from the price of lots, that the lots themselves would allow to put into the Asylum or the University more than the price therein specified, and upon that principle it was held to be directory and if it was found that from the sale of these lots and lands better buildings could be erected without taxation to the people, the Commissioners would be allowable in putting more money into the buildings.

Besides it appears that this man went on and filled his contract, and the State lost nothing by it. I think that the article with reference to Silver is the same. The next article is the 6th, with reference to what they claim to be the Governor's false response to the House. Now I undertake to say that the answer was as full as the resolution. It answers the resolution. There was not a man in that House but what knew as much about that money as the Governor himself knew.

"That, at the present session of this Legislature, in the month of January last, the House of Representatives of the State of Nebraska passed a resolution in the words, and to the effect following, to-wit:

"Resolved, That the Governor is hereby requested to communicate to this House, at the earliest moment, the name of the agent appointed by authority of an act of the Legislature, to collect from the United States the five per cent. upon the sales of public lands set apart for school purposes prior to the admission of the State. The amount so accrued and due to the

State, and the amount collected and paid into the State Treasury. Also the amount paid to said State agent for his services."

And thereupon the said resolution was duly communicated to the said David Butler, Governor of the State of Nebraska, and in response thereto the said Governor, on the 25th day of January, A. D. 1871, sent and transmitted to the said House of Representatives a communication, in the words and to the effect following, to-wit:

"To the Honorable the Speaker of the House of Representatives:

In response to a resolution passed by the Honorable House of Representatives relative to the collection of the five per cent. funds, I submit the following report: Amount accrued and due the State, January 1st, 1869, \$16,881.26. While in Washington, in the spring of 1869, I secured the auditing and payment of this claim, and deposited the above amount in the State Treasury. No fee or commission was paid any agent for its collection.

(Signed.) DAVID BUTLER."

In which communication the said David Butler, Governor as aforesaid, did falsely declare that he deposited the amount of money therein mentioned, in the State Treasury, well knowing that he had not deposited the same, or any part thereof, in such Treasury; and intending thereby to deceive the House of Representatives, the Legislature, and the people of said State, in the particulars last mentioned, contrary to his duty, and his oath of office; and whereby the said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of a misdemeanor in office."

That resolution was answered. Governor Butler always claimed, as he now claims, and as we think we have proved beyond a doubt, that the money was put into the State Treasury. If they had asked where the money is now, the answer would have been more full. The Governor says: "While in Washington, in the spring of 1869, I secured the auditing and payment of this claim, and deposited the above amount in the State Treasury." That is just what he claims

here, and Governor Butler does not do as Sweet and Brock do—tell two different stories. He tells the truth in the matter, and what he said then, he says now. As far as the loan is concerned, if there is question about it being a good loan, there can be no question of corruption. With regard to the Tichenor loan, I understand there is some \$20,000 insurance upon that property; but, however that may be, it is quite evident that Governor Butler acted in good faith. There has been one building removed, which increased the value of the property. If he erred, we are all liable to err.

The next charge is in reference to the Sioux City and Pacific Railroad. It is claimed here, that in violation of the law (and General Estabrook puts this specification stronger than any other), lands were granted to the Sioux City and Pacific Railroad. It appears that some seventy-five sections of land were given to the Northern Nebraska Air-Line Railroad. A consolidation with another road was effected, and consequently the lands were due, and were given to the road with which the Air-Line road was consolidated. And I assert here that if any road, with but one exception, were entitled to their lands, this road was. I read from the special laws of 1867, page 133:

"SEC. 1. *Be it enacted by the Legislature of the State of Nebraska, That seventy-five sections of the public lands, granted and donated to the State by the United States for the purposes of internal improvements, as provided in the eighth section of the Act of Congress of the 4th day of September, 1841, be and the same is hereby appropriated and donated to the Northern Nebraska Air-Line Railroad Company, for the purpose of aiding in the construction of the road of said company, which said railroad is to commence at De Soto, in Washington county, and terminate at Fremont, in Dodge county.*

SEC. 2. As soon as the public land aforesaid shall be selected by the State, the Governor, Secretary of State and Auditor shall select and set apart for the use of said railroad company, seventy-five sections of said land, as aforesaid, which selections

shall be in quantities of not less than one-half section."

Now, Senators, this road is completed. Governor Butler did not have discretionary power in the matter. All he could do in the premises was to comply with the provisions of the law, after receiving satisfactory evidence that the road had been completed. A railroad company, like any other party, has a right to make a transfer of property. As I said before, the subsidies were given them with the consideration that they were to complete this road and they did it, and they could have enforced this grant at any time. Now we come to the 11th article. There is a little difference between the witnesses in this matter. Some think the lots were not properly sold; that Governor Butler was favored above other bidders. Now there is nothing strange about this. I have seen sales where people were favored. I have been, for instance, where the homestead of a family was being sold, and men stood around and would allow no one to bid over them, and take their home away from them. Suppose that Governor Butler and the other commissioners had been bidding higher than anybody else, and it has been shown that they were prominent bidders, and had done much to raise the selling price of the lots, under these circumstances would it be strange if Governor Butler was favored a little at the sale of the block referred to? Now, Senators, I have but little more to say, and then so far as I am concerned, so far as Governor Butler is concerned, we will leave the case with you. The great object of impeachment, as I have already shown you, is to get a man out of office who will endanger the State by remaining in, and where the people are unable to get him out in any other way. Now then, if David Butler be convicted, upon what article is he convicted? If you say upon the 1st article, I inquire "why upon that?" The proof is that the State has been the gainer by it. Look over the other articles and show where this man has got a dollar to which he was not entitled. "The filthy lucre," "the almighty dollar," of which we hear so much, has not warmed his palm. There is one thing in

reference to that first count which I neglected. I was going to refer to it before, but I forgot it. It is this: You will find that the first three certificates were issued, and drew interest at the rate of 7 per cent. Now Brock swears to you that the only object in making the change in the certificates—issuing others later, was to save three days' interest, and I undertake to say that David Butler never saw these certificates. But I will not dwell upon this now. I speak of it to show that this was simply a Brock arrangement. I ask you then, are you going to convict David Butler on the 1st Article? If proof to the contrary is worth anything; if witnesses who are unimpeached are to be set aside for witnesses that have been impeached, you may find him guilty; but if you take the law and the evidence, which is all on one side, you cannot help saying that that money was given to the treasurer, and that he knew it to be State money. Estabrook says if you find that this money was put in the treasury, you must still find him guilty. There is no charge of this money being taken out illegally; no question as to whether we had the right to borrow it. The question is simply, whether Brock knew this was State money.

The duty of the Governor is to see the laws fully executed but it does not require him to meddle with private affairs. He has no right to go and examine Sweet and Brock's private books. It is only where the public law has been violated by force that, as Chief Executive, he is to see that it is enforced, but in other instances he has no more to do with it than any other person. Do you propose to convict David Butler without proof? Look for a moment at the kind of evidence on which it is proposed to convict him. First, Brock and Sweet, and then you have disappointed applicants for office. Disappointed applicants for salt leases, which salt cannot save. Brock and Sweet swear in self-defense. The others, with disappointed recklessness. And this is the kind of evidence by which it is proposed to fasten a crime upon the accused. We are told by the Managers that the respondent should be convicted as an example for others. David Butler is

already an example for others, for by his energy and indomitable will he has risen from the humblest to the highest station in life. The act would be one not unlike the mode too often resorted to by Rome in her earlier days, when the assassin's dagger was used to get rid of troublesome rivals. And if the act is to be done; if Governor Butler is to be convicted, disgraced, let it not be done here. Here, in this house, that has been reared by his energy. Here, where he has put thousands in your coffers. Here, where he has done so much to build a city and people a country. Here, where upon every hand monuments rise to speak eloquent in his praise. But if it must be done, seek some other spot; if there be such a spot where gratitude cannot enter; where local spite, party prejudice, and base browed envy hold their court. There erect your altar and immolate your victim. The counsel for the Managers says that the eyes of the people are upon us; that they have been criticising him. The criticism is just, and when read in the light of this case should be more severe, for the only one of all the series of articles charging crimes upon the accused, that the Managers have any hope of convicting him upon, is the first one. The facts upon which they rely for conviction were all known to the people of this State—canvassed by them before they went to the polls, and re-elected David Butler as their Governor; and the man who stands up here to-day, to reverse, by appeals to prejudice, the sacred decree of the people, defies the genius of our institutions, and tramples in the dust that liberty of which we so proudly boast. Such a man ought to be criticised—criticised by the people, and that just criticism is working its proper results.

The friends of impeachment are lowering their standard. But yesterday, every prejudice and passion raged against the respondent in all their savage might. To-day, it is as calm as the Dead Sea.

The counsel admits that respondent has been endorsed by the people, and asks you, *sincerely*, what will be the effect, if the Senate becomes the second endorser. By endorsing the respondent. Senators, you simply

endorse the people, by declaring that their decision shall be final.

The learned counsel for the Managers, refers you to the fact that yesterday a telegram announced to the world that North Carolina has impeached and convicted her Governor. That telegram carries with it its own shame in these words: "It was by a strict party vote." Party prejudice did it. Worse than that, for rebel hate was intermixed. North Carolina, fanning to a flame the smouldering embers of rebellion, may add another page of infamy to her history. Nebraska cannot afford it, as yet. The unsullied pages of her history bear no blot. Nebraska! First-born of that higher, nobler type of liberty, which proclaimed to the world, that no matter what color God painted his child—no matter whether blackened by Southern suns, or bleached by Northern fogs—no matter how hard the chains of slavery had pressed around him, the moment he touches our sacred soil, he rose above broken manacles, and holds aloft the ballot—the insignia of his freedom. She can not, must not, now turn upon that broad humanity which heralded her birth, and strike down one of her chosen sons—her people's favorite, and send him, ~~to~~ ruined, and undone man, to the bosom of his family. The blow, unaverted, falls not alone on him. Would to God it did! Would to God that no wife—no child were to feel its crushing weight. Senators! you this day stand upon the banks of a Rubicon, beyond whose flood lies the dreary waste of political strife and dark contention. Humanity bids you pause. But yesterday, the people placed around the brow of David Butler a wreath intertwined with the laurel; to-day it is proposed to write there a brand of infamy; a burning brand,—a brand which time cannot erase, and which, not even the good angels above can wipe out, or hide from human view.

Senators: As I close this case, let me remind you that those appeals of the counsel to the effect that the people demand the conviction of the accused; that you need not show crime, or even a corrupt motive, is only asking you

to trace backward from the sunlight of to-day, to those dark ages when a Court, spurning evidence, yielded to outside clamor and sent a sainted Baxter to the block, and bade Algernon Sydney tread the narrow steps of the scaffold.

Posterity will review our acts, and cannot do otherwise than condemn you if, by your verdict, you pronounce him guilty when the people have declared him innocent. Around you in this crowded hall, in the galleries and corridors, are those who anxiously await your verdict. God's own justice bids you at once break this dreadful suspense, calm those palpitating hearts, dry the tear which, forbidden comes, and answer the prayers so earnestly made, by pronouncing the magic, and now, by the behests of justice made golden words of NOT GUILTY.

The PRESIDENT. The counsel for the Managers will now proceed with the closing argument.

#### ARGUMENT OF MANAGER PORTER.

#### MR. PRESIDENT AND SENATORS:

The question which for many days has been by you under consideration, is about to be submitted for your consideration; and the conclusion to which you shall arrive is not only of vast importance to the prosperity of the State, but also of individual importance to the respondent, who, by the action of the House of Representatives, is now arraigned before the bar of the Senate. By your finding you are either to say that this respondent shall continue to occupy the highest office of the State, and stand before the people acquitted of all the charges which have been brought against him—justified in all his official acts,—or, on the other hand, you are to strip him of his office, and leave him degraded in his own State and throughout the nation. And I doubt not, Senators, that however unpleasant may be the task, if you find that any of the articles of impeachment have been sustained by the evidence presented before you, that you will not shrink from making the same appear in your verdict. In a case of this importance, it is natural that gentlemen who have been selected to present it to you should be impressed with the duty

that is conferred on them. It will be remembered that when the members of the House of Representatives assembled in the other end of the Capitol, that they came here direct from the body of the people. It will also be remembered that the first question that presented itself on their assembling was that there had been irregularities, misdemeanors and crimes committed by the Executive of the State. And, after a series of investigations and discussions touching these irregularities, resolutions were passed presenting these articles of impeachment, and the arraignment of the respondent before this honorable Senate. There has been much said, Mr. President, in the discussion of this case, about the malice, hatred and feeling of persecution that had possession of the Board of Managers, and of the House of Representatives. I disavow, for my own part, and I believe for every one of the Managers, any feeling of that kind. I am here at this time simply because it is my duty—one of the incidents of being a member of the House of Representatives—not from any solicitation on my own part to become a Manager, and thus make, as has been charged by counsel, a reputation; being a member, I would be doing less than my duty if I did not try and discharge what has been placed upon me by my colleagues, and I believe that every member has been animated by the same feeling; and, I would add, it is certainly an unpleasant position. For my own part, having no feeling of bitterness against the respondent, it is not pleasant to occupy my present position in this case. I have a different view in regard to the glory of the thing. I have never believed you were making capital, reputation or honor, by tearing down any man, or by inflicting injury on the family, relatives, or associates of any man. It would have been much easier for other members and for me, not to have had this exhibition presented before them. It came legitimately before us, and we are required to meet it, and do our duty, not only to the respondent, but to the State. Mr. President, there are some peculiar circumstances surrounding this case. It is well known that the gentlemen who have been presenting this matter

on behalf of the State, have not had the opportunity for preparation ordinarily given in the trial of a case of this magnitude. In most cases many months have expired from the time the articles of impeachment were filed, before the case finally came to a hearing. In this case, you are well aware of the rapidity with which it has been crowded forward, at the request of respondent's counsel. You are also aware that, while the counsel for the respondent are all professional men, and have had opportunities for consultation, on the other hand the Managers have been necessarily engaged in matters of legislation, owing to the absence of many members; and what has been done has been done under difficulties. And there is another matter of importance that surrounds this case. It is well known that if a man in a criminal case, he occupying a prominent position; if a man having large wealth and influential relations; if he is charged with some very severe and flagrant violation of the law, it is well known, gentlemen, how difficult it is to convict him; and it has almost become true that if we see the name of a person in high life, charged with a high crime, we read the facts and then say they cannot convict him. Why? There is a distrust that his position and influence will defeat the ends of justice. In this case, there is a similar parallel. The respondent has long resided within the limits of this State, occupying the highest position in the gift of the people in the State. He has identified himself with the interests, and has his political relations with many gentlemen in every quarter of the State, and at the outset there is a difficulty. Admitting, if you please, which I do not desire to have admitted, that he is the bad man he is charged with being; that he is guilty of all the specifications preferred against him in the articles of impeachment; admitting all this, if the respondent was a man of that character, of that lack of official integrity, a man of that will, would he not use every power in his position to seek to avoid the verdict of guilty in this case. He certainly would. It is not my intention to occupy very much time in closing this discussion. I will

endeavor to pass over, very briefly, the testimonies in support of the articles and specifications, and submit the case to your hands. I believe that a tale that twice is told loses its force; and I believe the gentlemen understand all the facts of the evidence in this case; and, perhaps, are better able to judge of the law than myself. In reference to the specifications of misappropriating, or the wrongful conversion of his \$16,000, I desire to say just a few words. The money was brought from Washington to Omaha, and placed in the bank. At that time the Governor conversed with Mr. Brock on the subject. Is there any testimony showing that Mr. Brock knew that it was State money? Nothing, I believe, but the testimony of Seth Robinson. He (Brock) went to Omaha and secured the money, returned and placed it in his bank. It is alleged by the counsel for the respondent that when that money was in the bank at Omaha, in contemplation of law, it was in the State Treasury of Nebraska. The reason urged was that the power of attorney was under seal and directed to Nelson C. Brock as Deputy State Treasurer; although there is no evidence, definitely, that it was under seal, or that it was to N. C. Brock, Deputy State Treasurer. If that document was under seal directed to N. C. Brock, Deputy State Treasurer, as they would have this Senate believe, why have they not produced it? I apprehend, gentlemen, that if it was produced you would find it entirely different than claimed. The money was here. When did Brock reach the city of Lincoln? Why, we have it almost beyond a question when he came. He himself states not positively, but that he thought he left on the 15th, and not being positive as to when he left, could say positively when he returned. This man, McConnell, comes on the stand, and on his examination, drawn out by the respondent's counsel, he swears positively Brock arrived on the 22d of May, just when the first certificates of deposit were signed. Is not this sufficient evidence? You do not find anything to contradict that. Then we shall consider that the money was brought here on the

22d of May. What have we in testimony as to what was done with that money? Consider the proposition of the respondent that Mr. Brock, for the purpose of gain, was desirous of receiving that money (it being State money.) Some say that Mr. Brock had stated that it was State money, and he was bringing it down in order that the bank might be "flush." If it was State money, and part of the school fund, why did not N. C. Brock take a certificate of deposit of that money, and send McConnell out to buy State warrants and use it until the meeting of the Legislature? Where lay the interest of N. C. Brock in disposing of that fund? Was it to keep them as State funds, or was it in loaning them to the Governor in the manner he alleges? I believe there could be no question in regard to that position; that his interest was clearly to deposit it in the Treasury of the State. But, on the other hand, he did not do that; and that is corroborative of the statement made by Brock, that there was an understanding that the Governor was to take certificates of deposit of the money, and leave the same with Brock for a short time. Examine the position taken by the respondent as to how he came to borrow this money. It seems his counsel base their whole defense upon this point,—that Mr. Sweet desired the Governor to borrow the money in order that it might be drawing interest. When we come to consider that there was, at that time, some \$70,000 of State funds in the Treasury not drawing interest, is it reasonable to suppose that Sweet selected out this particular amount of money, and offered it to Butler, in order that it might draw interest? There is one point with reference to the securities claimed to have been given, to which I desire to call the attention of the Senate. You will, no doubt, have handed to you for consideration the mortgages given to secure this alleged loan. I desire that you examine these various tracts of land, and see whether the different values are in proportion to the whole value which these mortgages cover. For instance, you will find that the mortgage on that tract which they prove to be of the value of \$8,000, is given as

security for only \$1,000, instead of being put in as security for \$4,000 or \$5,000, which should have been done if the land is as valuable as they claim; while mortgages covering a like number of acres, which have been proved to be worth only \$1,000, have been given to secure as much of the pretended loan as the mortgage covering the \$8,000 tract. But in considering these mortgages, the fact which appears should always be borne in mind—that only after threats of investigation had been made, and the Legislature was about to convene—indeed, after it had assembled—were these mortgages ever filed for record. And I apprehend that the people of the State, in their consideration of this question, will remember the often reiterated assertion of this respondent during the late campaign—when questioned in reference to the \$16,000 school fund—that he had borrowed the same out of the State Treasury, and had given mortgages on \$40,000 worth of real estate to secure the same, and that said mortgages were signed, sealed, delivered and recorded, and were at that time in the State Treasury. I desire to make a few remarks in reference to Specification four, in the Second Article. I do this, not because I believe the testimony on the matter is not understood, but I do it in justice to the witness, Mr. Hall, who was called in support of this specification, in conjunction with other witnesses. An attempt was made on the part of the counsel for the respondent to throw disgrace upon Mr. Thomas F. Hall; and we think that this attempt was entirely unwarranted, and that this testimony was given fairly. He stated that he was here on several occasions; that at the first visit he made to Lincoln, he had a conversation with the Governor, and at that time it was stated by the Governor that other parties were interested in that part of the saline lands which Hall wanted, and he (the Governor) would have to see them. Then he states that after he returned to Omaha, he received a letter (which was offered in evidence,) and he also testified that he returned to Lincoln and had another conversation with the Governor. I quote from his testimony relating to the conversation: "HALL.

—The Governor asked me what I would give to secure the lease? He said that what I had selected was almost too good a piece for one man to have; that he had been offered \$5,000 for it, but would not let it go; but, as we had been around and meant business, we could have it for \$5,000; that he would give that for it himself were he not Governor." The specification I refer to, alleges that Hall had a conversation with the Governor, who at that time made a proposition that Hall should pay him \$5,000 for his influence, and he would secure him this lease of saline lands. Then Crowell says that the Governor said \$5,000 was little enough. Hall looked at him and smiled, and then Hall asked Butler if \$1,000 was not enough, and the Governor said "no, no." Crowell said he did not know whether the Governor had a right to take the money or not. I consider that that article has been maintained by the evidence, and that there was an attempt made by the Governor to corruptly procure money, for merely performing his official duty. The next specification refers to the offer made to the Governor by Nelson C. Brock, to secure the influence of Butler to appoint him Treasurer of the State University, and that the Governor understood the proposition made by Brock, who went out of his private office under the impression that the Governor was to aid him to secure the appointment in question, and he was to pay Butler \$750. I think there can be no question about the truth of the specifications in this Article, but I shall not insist upon it, in view of the fact that there are other specifications charged, which were better maintained in the testimony. Let us now turn to Article 3, which reads as follows:

"That on the 18th of February, 1869, one Champion S. Chase, Esq., was, and for some time last past had been, an Attorney for the State of Nebraska, retained and employed by the Governor of said State, and had as such Attorney rendered certain services for the said State; and it was the duty of the said David Butler, Governor of the State of Nebraska, under and by virtue of the law thereof, to determine what compensation for

such services was fair and just, and according to what was paid in similar cases. And thereupon, to-wit: On the 18th of February, 1869, the said David Butler, Governor, as aforesaid, did, wilfully, falsely, and corruptly, determine and represent to John Gillespie, then the Auditor of the said State of Nebraska, that he, the said David Butler, Governor, as aforesaid, deemed the sum of two thousand dollars to be a just and fair compensation for the services so rendered by the said Champion S. Chase, Attorney as aforesaid, and did wilfully, corruptly, and unlawfully induce and cause the said Auditor to issue two certain warrants upon the Treasurer of said State of Nebraska for the sum of one thousand dollars each, under the pretense that the same were issued for the services of the said Chase as such Attorney; he, the said David Butler, Governor as aforesaid, then well knowing that said sum of two thousand dollars was a much larger sum than was fair or just for such services or was paid for similar services; and not intending that the whole thereof should be paid to the said Chase, but corruptly intending to appropriate one of the said warrants to his own use, and thereupon, to-wit: On the 22d of February, 1869 the said David Butler, Governor, as aforesaid, did wilfully and corruptly appropriate, to his own use, one of the said warrants, and upon, and by virtue of the same, did draw and receive from James Sweet, the Treasurer of the State of Nebraska, the sum of one thousand dollars, which he then and there appropriated to his own use and benefit, contrary to his duty and oath of office, whereby the said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of a misdemeanor in office."

Now, Senators, let us look at this transaction and see just how it appears. Champion S. Chase had been acting as Attorney for the State of Nebraska, until his salary amounted to a little over \$1,000. It is also in evidence that he had requested the Governor to draw, and sign his name to the warrant due him, and bring or send the money to him at Omaha. The Governor, upon that, goes to the



State Treasury and presents two warrants for a thousand dollars each. He gets the money on these, and goes up to Omaha, where he calls upon Chase and tells him "Here is \$1,000; I desire to use considerable money in Washington City, and I will keep the balance until I get back." Nothing more is said about this transaction for many months. Subsequently another man is appointed Attorney General to the State, and then Chase wants his account settled, and then it is that he learns for the first time that Governor Butler has drawn another warrant for \$1,000. Now, I ask if this transaction does not bear upon its face, an intent to defraud? Why does he draw out of the State Treasury that amount of money, in that way, and then keep it for such a length of time,—keep it and pay no interest on it? It was only through fear of exposure—it was only by the clamoring of Colonel Chase—after he found he could not, with safety, keep that money longer, that he returned it to the State. Now this transaction is just as damaging to Governor Butler as it would have been if the amount had been \$5,000 instead of \$1,000. If you should, by your verdict, sanction that proceeding, the Governor could get warrants for the pay of the District Judges for the entire term of their office, and only return it at the expiration of their term of office. This shows a misdemeanor on its face, and in my judgment the Article should be maintained.

Article 4 charges, among other things, that the Governor entered into a contract for the erection of a Lunatic Asylum in excess of the appropriation. I will read the Article:

"That the said David Butler, so being Governor, as aforesaid, in the year 1869, being, by virtue of his office, one of the Commissioners provided for by 'An Act to provide for the sale of the rentals, lots and blocks on the town site of Lincoln, and for the location and erection of a State University and Agricultural College and State Lunatic Asylum, approved February 15, 1869, to locate a site for a State Lunatic Asylum, and to direct the expenditure of the sums named in said act in the building of a State Lunatic Asylum, did unlawfully and corruptly

enter into contract with one Joseph Ward for the completion of the said Lunatic Asylum, at a contract price greatly—to wit: eighty-eight thousand dollars—in excess of the sum appropriated for said building. That he, the said Governor, well knew at the time that said Ward was entirely irresponsible and unable to give the bonds required by law, that he had no qualification or capacity as a builder, that by the terms of said contract the foundation of said Asylum was to be completed for eighteen thousand and five hundred dollars, and that in the spring of 1870, said foundation was not finished, and there was due to said Ward less than that sum upon said contract, yet the Governor, well knowing the premises, approved the estimates of said Ward, and caused the same to be allowed and paid to the amount of forty-five thousand dollars. Whereby he, the said David Butler, Governor, as aforesaid, did then and there commit, and was guilty of a misdemeanor in his said office."

Article 5 is similar to Article 4, only it relates to the State University, and charges that at the time the contract was entered into, it was for a much larger sum than the appropriation made by the Legislature called for. This is the Article:

"That said David Butler, being Governor as aforesaid, in the year 1869, being a member of the Board of Regents of the University of Nebraska, and ex-officio President of said Board at Lincoln, in the State of Nebraska, did wilfully and recklessly assent, and become a party to a contract with D. J. Silver & Son, dated August 18, 1869, for the erection of the State University and Agricultural College of Nebraska, at a price greatly in excess of the appropriation therefor, whereby said David Butler, Governor of the State aforesaid, then and there committed and was guilty of a misdemeanor in office."

The Senate will recollect that these two Articles have been admitted to be true by the defence, so far as the excess of the appropriation is concerned. Here is their answer to the 4th Article:

"For answer to the Fourth Article, the respondent admits that the Commissioners named in said article,

entered into a contract with one Joseph Ward for the erection of the Lunatic Asylum, and that said Commissioners, in said contract, exceeded the amount appropriated for the same.

But this respondent alleges that said Commissioners made said contract in the full belief that they would be able to realize from the sale of the unsold lots and land of the State, appropriated by the act in said article mentioned, money sufficient to liquidate the demand of said contract, according to the terms thereof, and the respondent alleges that the said unsold lots and land will sell for a much larger sum than is necessary to pay the remaining amount due on the same.

And the respondent further says, that by a Joint Resolution of the Legislature of this State, approved March 4th, 1870, the said Legislature, after a full and thorough investigation of all the facts pertaining to said transaction (as well as others), fully endorsed, approved, ratified and confirmed the same.

But this respondent expressly denies each and all allegations in said article, not hereinbefore answered, and the respondent submits that all of his acts in the premises were done and performed in his capacity as one of said Commissioners, and not in his official capacity of Governor of said State, and that by reason thereof, he is not called upon to answer said article.

Wherefore, this respondent denies that he did commit, and was guilty of a misdemeanor in office, as therein set forth."

Their answer is also similar in reference to the University contract. They admit that they entered into this contract, and it is in evidence that upon these contracts money was paid largely in excess of, the appropriation made by law.

I desire to call your attention to Section 1, Article on Finance of the Constitution, which reads as follows: "No money shall be paid out of the Treasury, except in pursuance of an appropriation by law." You will remember, gentlemen, that the proceeds arising from the sale of lots in Lincoln, and from the sale of lands set

apart for the construction of public buildings, was deposited in the Treasury of the State, and there credited to this building fund. And after having been so deposited, it was as certainly in the State Treasury as any fund belonging to the State could be. And the respondent, Senators, comes before you by his counsel, and asks that you endorse and give sanction to his course in his confessed violation of the Constitution of the State, to which I have referred, and the wish of the Legislature of the State, as manifested in its appropriations for the public buildings which have been made.

The precedents you are asked to establish—that I may say has almost been established, and which will become nearly as binding as the organic law of the State—that an officer occupying an official position can exceed the power conferred upon him by the Legislature and constitution, is to ignore the Legislature and trample the constitution under foot. I remember of being in Lincoln two years ago, and hearing discussion among the people about the excess of appropriation upon the Capitol building. It was passed over at the time, but we find by the report of the Commissioners that this has been continued until the excess of the appropriation amounts to over one hundred thousand dollars. The respondent comes in here and pleads guilty. And what is the justification of the exceeding of this appropriation? In the language of the eloquent Marquette, it is that the Governor thought it necessary to have a better building. The plea is that his judgment is better than the judgment of the Legislature of the State, and if good, it would have been economy to have omitted a Legislature and trusted the destinies of the new and growing State into the hands of a single individual, whose wisdom and integrity and sobriety were such as to make him pre-eminently fitted to be the dictator of a populous State. I believe that it will appear to this honorable Senate that the appropriations made by the Legislature were exceeded by this respondent by many thousands of dollars—not that the interests of the State demanded at this time such a vast expenditure of money, but that the respondent, by

having this money expended during his term of office could receive pecuniary advantage therefrom. That if he could make \$5,000 in letting a \$20,000 contract for a State building, he argued to himself that by increasing it to a \$40,000 contract he could absorb into his own pocket \$10,000. And that if the people by their Legislature had authorized the expenditure of \$80,000, by violating the express wish of the people and the constitution of the State he could let a contract of \$160,000, by so doing he could double his profits. There is no person acquainted with the wants of the State, of the cost of constructing public buildings, but must believe that the appropriations made by the Legislature for the construction of public buildings were sufficient to meet the public demand for years to come. And when this respondent proceeded deliberately to exceed those appropriations, there can be no question that in so doing he disobeyed an act of the Legislature to which his own signature was appended and violated the constitution of the State which he had sworn to support. For my own part, Senators, I can conceive of no action on the part of an executive officer of the State more dangerous in its tendency than the assumption of power to which we have referred and to which the respondent in his answer pleads guilty. To illustrate the practical working of this assumption of power, suppose the present Legislature should have under consideration a bill making an appropriation for the purpose of erecting an asylum for the deaf and dumb. And after having spent many days in discussing the provisions of the bill, it should be determined by both branches of the Legislature that \$50,000 should be set apart out of the State Treasury for constructing such a building. And suppose the bill should also provide that the present Secretary should act as a commissioner and be the agent of the State in expending the money so appropriated. And after we return to our homes he should conclude that the State ought to have an asylum worth \$100,000 instead of \$50,000, could you excuse an action of that kind? It is a similar one to that of which the respondent in his answer pleads guilty. This matter

now for the first time has come under the consideration of this Senate as a court authorized under our constitution to inquire into such acts, and you are to say whether the present Governor, or any Governor, shall overturn and ignore the action of the Legislature and shall become a tyrant in the exercise of his office. You have heard his excuse time and again, that he saw a man in Nebraska City, who thought they ought to have a larger building, and he on that ground claims an excuse for exceeding the appropriation, and now comes and pleads the public good, that he has increased the value of the State property and has built a city, a monument, brother Redick tells us, which will stand when the grass is growing over his grave; but it is a question among some architects whether it will stand until this Legislature is closed. Has Governor Butler indeed made the State prosperous, and by his energy built the public buildings as it is claimed for him, without any cost to the State? Has it been done by the increase in valuation of the lands, or out of the sale of lots in Lincoln? Not at all. But it was out of the sale of lands belonging to the State of Nebraska. Let me refer you to a few figures. By their own report it is shown that there has been 16,660 acres of public lands sold, the return of which amounts to some \$120,000. We find that there has been appropriated for finishing and furnishing public buildings \$26,385. There has been appropriated to pay outstanding indebtedness on building the Insane Asylum \$19,876, excess of appropriation \$15,000; balance still due on University building, \$42,000. We have \$105,762.79 that is now due against this monument of the respondent, to which his counsel refers. There was at the time of the capital removed from Omaha a loan of the general fund of the State to the building fund of \$7,515.00. That has not been paid back, but is still due the general fund from the building fund. We think, Senators, we have shown that so far as the violation of the Constitution in exceeding the appropriation for the public building is concerned, instead of being a benefit will prove, in many ways, a loss to the

State by impairing her credit and increasing public expenditure. It will result in increasing the taxes upon the people of this State until its prosperity will be ruined. In reference to Article 6th, I have only this to say, that if the Senate find that any of the specifications of Article 1st are sustained by the evidence in the case, it will then follow, of course, that the Governor at the time he made his report referred to in this article, transmitted to the House a falsehood.

Mr. President, I desire to say a very few words in reference to Article 9: "That said David Butler, Governor of the State of Nebraska, in the year 1870, but at what particular time is unknown, at Lincoln, in the State of Nebraska, regardless of his duty, and his oath of office, did improperly, partially, wilfully and unlawfully execute and cause to be issued and delivered to the Sioux City and Pacific Railroad Company, a patent or patents of the State of Nebraska, of and for a large quantity of the public lands belonging to the State of Nebraska, to-wit: Seventy-five sections thereof, situate in the counties of Dodge, Burt, and Cuming, and being the same lands granted or secured by an act of the Legislature of this State, to the Northern Nebraska Air Line Railroad Company; whereby the said David Butler, Governor of the State of Nebraska, then and there committed, and was guilty of a misdemeanor in office."

I think I can say all I desire to on that section very briefly. It has not been very fully discussed before the Senate in the course of this trial, but, for my own part, I believe the article has been sustained. The law has been referred to granting the lands. That "whenever a section of ten miles shall be completed on said railroad, the said company shall be entitled to receive from the State patents for twenty sections of land selected as aforesaid, and on the completion of each subsequent section of ten miles, patents shall be issued to said company for a like quantity of land, selected as aforesaid, and on completion of the railroad patents shall be issued for the remainder of the seventy-five sections of land not then patented as aforesaid." Now then, Senators, you

remember the testimony of Mr. Davis, that this company, in the first place, had a meeting in the city of Omaha of incorporators for the purpose of perfecting the organization. They adopted some by-laws, which provided that three months from that time there should be a meeting of the company for electing officers for the ensuing year, and that was to be the first annual meeting of the company. He says that that meeting passed by without officers being elected; that a year after that time some incorporators were informed they had not completed their organization at the time the by-laws provided, and says that he himself made up the records. He further testifies that when the books were opened for the taking of stock no money was paid in, and that the majority of the stockholders resided at Cedar Rapids, in Iowa. He took one share of \$100, and never paid anything on it. This was the condition of the railroad company to which this grant was made at that time. He also states that after the Sioux City and Pacific Railroad had been graded nearly the entire distance from Blair to Fremont, the agent of the Sioux City and Pacific Railroad and he (witness) consolidated, or pretended to do so, the two companies—the Northern Nebraska Air Line and the Sioux City and Pacific railroads. I ask you whether he could do that under the section of "The Revised Statutes" that has been read, page 220.

Remember, this consolidation was claimed to have been made under that section of the statute. That statute provides that when the road is constructed, and that the two railroads form a continuous line, that the consolidation can take place. The testimony is that at that time the Northern Nebraska Air Line Company had not done anything; never had a dollar in the treasury, nor had even staked out the line or built the road. Neither had the Sioux City and Pacific Railroad constructed their road. Now, is it not plain that the Governor of the State ought to have known whether there was a railroad of the kind contemplated by the statute built in the State of Nebraska before he allowed those lands to pass from the State? After this pretended consolidation of these

two companies takes place, the Sioux City and Pacific Company completed its road from Blair to Fremont, and made this a part of the Union Pacific Railroad, claiming and securing \$16,000 of Government bonds to the mile, just the same as the Union Pacific Railroad, and all of the lands outside of the ten mile limit and within twenty miles, and was a road subsidized by the Government, and was in process of construction and partly completed at the time this pretended consolidation took place. And shortly after that the road was completed. John I. Blair completed the road. The witness tells us the plug road was built in every way unsafe, out of old iron, of narrow ties, at a grade of 140 feet to the mile, and I ask you what was the duty of the Governor of the State, when those agents approached him for the purpose of asking the appropriation of land? Should he not have looked into it a little more carefully? And the suspicious circumstance is that when those men first came here there was a consultation between the Auditor, Governor and Secretary of State, and the Secretary of State was one of the incorporators of the road, and was therefore interested. Then we learn that Gen. Bowen comes down to Lincoln; the gentleman the Governor appointed himself. He came here in the employ of Blair, then comes Blair's attorney, and they desire to have the selections made by Blair of seventy-five sections, confirmed. The Auditor objects, and he says the Governor objected, too, at the time. The Auditor said he had doubts about the legality of the consolidation, and it is in evidence that the Governor pledged himself to the Auditor that he would not confirm the selections of those lands. You recollect the testimony of the Auditor, was that that was the understanding to which they came at that time. What was afterwards done, is shown by the evidence. John I. Blair visited Lincoln; afterwards the agent came into the Auditor's office and informed him patents had been issued for those seventy-five sections of land. The evidence tells us the Auditor had marked all the lands on a map, and when he found

fault with the Governor the Governor said it was not the same land. Then he gets the list of the lands and compares it with the original map, and finds it is the same land; and now I ask you how came Governor Butler to change his mind? How came he, as the chief executive of the State, appointed to look after its interests, to guard her public domain; how came he to change his mind, and allow seventy-five sections of land, among the finest in the State, and worth at least half a million of dollars, to go into the hands of one of these land-grabbers of the East? And all the State has to show is a piece of worthless road, scarce four miles in length. It is a matter for you to decide whether the Governor was acting in good faith. It seems to me that any honest man, if he had been Governor, before he allowed the land to pass away, would have examined it pretty closely, and, if necessary, would have had the thing decided in a court of law, and have said "we are not going to let you have this land unless you receive it at the end of the law." It seems to me a man, in his private transactions, would have done it, and it seems very probable that a man occupying this high position should have done the same thing.

We now come to Article 10:

The specifications under this article refer to a matter that has been under discussion and consideration by you for a considerable length of time. I believe that you would conclude from the testimony of several witnesses testifying in regard to this specification, that there were similar transactions to these going on in this city of Lincoln, and that the respondent was responsible for the same; and it is for you to determine whether the transaction was legitimate and correct. It appears from the testimony, that in the case of this land, when it came into the possession of the respondent, there had never been an opportunity for it to be competed for at a real *bona fide* public sale. There can be no question, I believe, in regard to that. I believe it was a put-up transaction; that the respondent was to receive that block of land; that he did receive it as the witnesses detail; that it

was afterwards sold at a large advance, and that he pocketed the overplus. It depends, to a certain extent, as to whether you regard it as a criminal transaction, a violation of official integrity, or a misdemeanor. I do not believe there is a Senator who, if he being in the employ, we will suppose, of the Senator from Johnson county, instead of the State, and had taken some real estate to dispose of, I apprehend that that Senator would insist that his agent should act in good faith with him; not play sharp tricks upon him; and if he paid a salary to him to do the business, all the money made out of the sales would belong to him; but here, in this Lincoln lot matter, the Governor was paid a salary for doing business, and I do not believe there is any question but that every dollar made out of those sales should have been placed into the Treasury. There could be no other safe way. Examine carefully the testimony of the Secretary of State; look into the transactions there; see the manner in which they conducted business, and I submit whether it was doing business as it ought to be done. They claim it has been a great success, but I apprehend, if all the debts were paid which have been contracted, directly and indirectly, and all negotiations fulfilled which have been entered into for the erection of these buildings, there is no financier in the State that would take the whole of the boasted public buildings of the State, and pay the outstanding indebtedness that remains against them, and make the State good for the thousands of acres of State lands that have been sold, and the proceeds of which it is pretended has been expended in their construction.

But, Senators, this is a matter for your consideration; and this is to be one of the practical results of this trial. You are to determine whether a land commissioner, or any other State officer, can keep the records who keeps the books in his office in pencil marks; or whether, when you come to your agent and say, "Have you sold this property for such an amount?" he can have his record in all right. This system of keeping accounts in the loose manner in which the land-sales-book was kept, while I admit there

might have been some excuse for, before getting thoroughly into running order, yet when you look at that thing all over, and find it was the same at all of the sales, it looks as though that matter was conducted in that method for a purpose, viz: That these parties—the Governor among them—might, instead of giving the State what was properly her due, receive for themselves the benefit that might arrive from the increase in value of these lands.

Now, Senators, I have briefly passed over the several Articles, and feel that I have done it very imperfectly. I desire to glance over the arguments of the respondent's counsel, and refer briefly to the positions they have taken. You will recollect that Mr. Redick found great fault; charging that this impeachment originated in the Senate. It did not originate in the Senate, as the Senators very well know, but was the result of the investigations made by a joint committee of both House and Senate. Most of the points advanced by respondent's counsel, I see I have already referred to in their connection with the various Articles. I was somewhat astonished, Senators, at the position taken by the counsel who first argued this case, and who got up before this honorable Senate, and charged that this trial was an entire farce. He also made repeated attacks upon the counsel for the State. It is true, gentlemen, that the State is not as well situated to procure counsel, perhaps, as the respondent. It is true, gentlemen, that our poor State of Nebraska is not very well situated as to funds, and this fact may have something to do with regard to employing counsel in this suit. Under the able financiering of the respondent, who for many years has had the destitutes of our State in his control, and who, his counsel informs us, like one of old, builded a city and "made the desert to blossom as the rose," it would not be expected that the impoverished State of Nebraska could measure legal swords with him, the more especially, as when the last account was taken of its treasury balance, there remained only the beggarly sum of seventeen dollars. On the other hand, the respondent has a great array of legal talent. We see the attorney of the

Omaha and North-Western Railroad; the Attorney of the Omaha and South-Western Railroad, and the Attorney of the Burlington and Missouri R. R., employed to defend him, each representing companies receiving large land subsidies from the State, distributed by the respondent and under a law which he well knows he helped lobby through the General Assembly. There is no difficulty in the respondent's getting counsel, for everything goes off like clock-work; everything is running smooth and nice. How is it upon the other hand? We have gentlemen whose entire time is taken up by pressing duties, and who have not had opportunities to counsel together. I was surprised at the gentleman making the charges he did, upon the counsel for the State. He did not keep within the rule, in his argument, but made all kinds of charges against us. In referring to article 11th he made an attack upon the Auditor, charging that John Gillespie had turned States evidence in this matter, and the same charge was made in other specifications. Now, gentlemen, I am not here to defend John Gillespie, for I believe in my heart that he has done a good many acts which he is not warranted by the law in doing, but I say that when he was put upon the stand, he did not volunteer any testimony whatever. What information was got from him, was obtained only by close questioning. It is true that his testimony in the matter is very important. It is true that it is important with regard to the sale of this block, but all this testimony was drawn from him. After John Gillespie made the statement with regard to Butler asking him not to oppose a certain appropriation, because he (Butler) was out \$30,000, and if this appropriation passed he could make up his loss, the counsel for the defendant made a very bitter attack upon him. Why do they do this? Does the counsel desire that John Gillespie should come upon the stand and perjure himself. It would almost appear so.

I now refer you, gentlemen, to that portion of the Governor's Message relating to our salt interests:

"The report of the Treasurer will show a small amount paid in as a

royalty on the manufacture of salt. Neither of the companies engaged in its manufacture, can, however, be said to be in good working condition.

After thoroughly investigating the matter I am satisfied that these interests can never be well developed without State aid, and it is of no small importance to the State, that such development be secured at an early day. To carry forward the work successfully, a large amount of capital is required, and capitalists are slow to embark in enterprise of this kind, without some *present* inducements being held out. To the end that there may be no further delay, I recommend that the unappropriated Saline Lands, belonging to the State, be donated, under proper restrictions, and in limited quantities, to aid the enterprise now begun, and others that may be inaugurated. This will be but just, as we offer no inducements and charge a heavy royalty, and will be but carrying out the original design of the General Government in making this grant. In other States the expense of sinking wells is borne by the State, the brine furnished the Company, ready for manufacture, and then a much smaller royalty exacted. Let me urge upon you the necessity of taking some action on this subject at once, and of hastening forward the day when the manufacturer of salt in our State, will be not only a matter of Commercial importance, a source of wealth to our citizens, but a great source of revenue to the State."

Now take that message, gentlemen, and the testimony of John Gillespie, and the other testimony, where it is shown that the respondent was interested in this matter. Here he has recommended a donation of lands for the very purpose of making personal gain. I rather guess, gentlemen, that some of you have heard of this matter before; heard of it in the Legislature—heard of it in this Senate chamber. The respondent's counsel have urged in his defense, that, while occupying the position of Governor of the State, he never made any money, and for that reason we would naturally infer that he should be acquitted of the charges brought against him now. If that was not the meaning of the counsel in charging that he had made no

money, I see no reason for making the statement. I claim that it is of but little importance to this Senate what the Governor's financial position may be. The people of this State are not responsible for his extravagances. It is said that the Governor is a very liberal man, and I believe this to be true. The counsel has had a good deal to say about Brock. He has told us how corrupt he is; how vile he is. He tells us that for more than two years Brock has been fooling Legislatures—has been fooling the people. Now, it occurred to me at the time, Senators, that, if such were the fact, it would recoil against the respondent. Do you believe that if all this be true, if all these violations of the law were carried on for two years, that the respondent would not be cognizant of it? If all these evil and corrupt practices existed, I think there can be no doubt in your minds as to the respondent having a knowledge of them. Mr. President, when this testimony was being introduced, and when the counsel was making his argument upon it, there was one point that occurred to me as rather significant—that if the loan was not made at the time explained by Brock, why did the Governor, when these mortgages were made, date them back to that identical time? and if these certificates of deposit were not issued as claimed, why did they not show it? If that is true, why did they not turn to this book of stubbs, and show where that certificate of deposit was placed in there, but there is nothing of the kind there. (Pointing to witness.) No, senators, that is not the facts in regard to those certificates, and such a defense will be of little value before this court: for I believe that this Senate will consider that matter candidly.

While I have a good many points which I had marked that I have not yet referred to, yet I know that this Senate is fatigued, that they have listened with great patience and I have no doubt you desire to be released, and for my part I do not feel like following these counsel for the respondent through all this testimony; two of them have spoken. Their defense is before you, senators, and it is for you

to say whether it is sufficient to clear the Governor of the charges and specifications in the articles of impeachment.

A great deal has been said about what an impeachment trial is for. I agree with Mr. Marquette that it is to remove from office one who has proven himself unfit for office. This court has the power to remove from office, and I believe, that this Senate will not shrink from the discharge of its duty in this case. I know it has been whispered around that this or that Senator will do this or that. But I have confidence that if you believe Governor Butler is guilty of any one of the charges, you will vote guilty. The influence outside and inside of this senate chamber has been strong upon you, but I do not believe that these influences will have any effect upon you. I believe that you should judge by different rules than in ordinary courts and trials, it is not a matter of dollars and cents but one of great importance to the people of this whole State. I believe there is such a thing as honest integrity that will lead a man to do right in all things, something more than simply discharging his duty, we want something more than that, we want to know that we have a Governor that will stand firm like the rock amid the surges of the ocean. I have no personal feeling against David Butler in the world, he may be liberal and large hearted, but as a Governor, Senators, he is a most lamentable failure. I believe, Mr. President and Senators, that I have presented all of the points that now occur to me and I almost feel like asking your pardon for occupying so much of your time. I would however ask you to remember that the managers in this case or nearly all of them, have not had the experience in law that the honorable counsel for the respondent have enjoyed, and if we have done that which was not in accordance with the rules of law, it was done without any wish of mine; but being placed in this position by the House of Representatives I have done what I believed to be my duty without any fear or favor, and I believe every manager in this case has done the same and I believe this Senate will cast its vote in the same manner



and by that vote say whether a Governor may make use of the public funds for his own private use—exceed appropriations of the General Assembly, and speculate upon the public patrimony, or whether he must be true to all his trusts in the exercise of his office; whether the State of Nebraska shall be a prosperous and glorious commonwealth, or whether her resources shall be squandered, and she sink down into obscurity, which I believe will be the case if the present state of things is permitted to go on without any opposition. The counsel for the respondent claims that a majority of the people, by their vote in re-electing David Butler to office, passed upon his acts prior to that election; but I say that question has nothing to do with this Court; this is a case of law and evidence before you, and you only can decide it. It is true that an investigation was had in a committee of some of the charges brought in these articles; but let me ask how was that investigation conducted? Every step was blocked by the influence of the Governor; but what was the feeling and conviction among those Representatives at that time? They were fresh from the people, and knew what the people thought of these matters, and there was only, I believe, six men out of the thirty-nine but what said that articles of impeachment should have been brought in.

Now, Senators, in view of the fact that lengthy arguments have been made, I am willing to submit this case into your hands, believing your finding will be in accordance with justice and with right.

Senator HASCALL. I move we take a recess until seven o'clock.

The President put the motion, which was carried, and the Senate, sitting as a Court of Impeachment, took a recess until that hour.

#### Evening Session.

Senate met at seven o'clock.

The PRESIDENT having called order

Senator THOMAS said. I desire to offer the following resolution:

*Ordered*, That the question upon the articles of impeachment exhibited against David Butler, Governor of the State of Nebraska, be put in the following manner, to-wit: The Secretary shall read the several articles of impeachment, beginning with Article 1st. After the reading of each article the President shall put the question of "Guilty" or "Not Guilty," in the following form to each Senator, who shall rise in his place, as his name is called:

Mr. Senator ——. How say you, is the respondent, David Butler, Governor of the State of Nebraska, "guilty" or "not guilty," of a misdemeanor in office, as charged in the article?

Each Senator, upon such question being put to him shall answer "guilty" or "not guilty" only.

Each Senator shall be permitted to file, within two days after the vote shall have been so taken, his written opinion, to be printed with the proceedings.

I move the adoption of the order.

The PRESIDENT. Gentlemen, the question is upon the adoption of the order. As many as are of the opinion that the order be adopted, will, as their names are called, answer "aye." As many as are of a different opinion will, as their names are called, answer "no."

The SECRETARY called the roll, and each Senator voted in the affirmative.

The PRESIDENT. Gentlemen, thirteen members having voted in the affirmative, and none in the negative, the order is adopted.

Senator THOMAS. I now offer the following:

*Ordered*, That the following be added to the rules of practice and procedure in the Senate, when sitting on the trial of impeachments:

On a conviction by the Senate, it shall be the duty of the presiding officer forthwith to pronounce the removal from office of the convicted person, according to the requirements of the Constitution.

No further judgment shall be rendered, except on the order of the Senate.

I would state that this is copied from the order offered by Senator Sumner, in the Johnson case, and was not adopted, because they did not reach it.

The SECRETARY, by request read the order.

Senator HASCALL. I move that the order be adopted.

Senator GERRARD. I move that the Senate do retire to the Supreme Court room for consultation.

Senator HASCALL. I see no necessity for that. But I waive my objection.

The Senate then retired for consultation, and after a short absence, returned to the Senate Chamber.

Senator TUCKER. Mr. President: I present the following order:

*Ordered*, That when the Senate, sitting as a court of impeachment, adjourns, it will be to Monday next, March 27th, at 10 o'clock A. M., at which time the Senate will proceed to vote, without debate, on the several articles of impeachment exhibited against David Butler, Governor of the State of Nebraska."

The order was adopted, and the Senate adjourned until 10 o'clock A. M., Monday, March 27th.

#### Twelfth Day's Proceedings.

The Senate, sitting as a Court of Impeachment, met at 9:15.

The Chaplain of the Senate not being present, the Rev. L. B. Fifield, Chaplain of the House, officiated in his place, and offered the following prayer:

"Almighty God, our heavenly Father, unto Thee we look for wisdom, truth, and love; that these may prevail this day and this hour. Send, we pray, of Thy wisdom, truth, and justice, to stand together in this place, at this time. May that which shall be done, be that which should be done

for the sake of truth, for the welfare of the people, for the good of the nation, and for the glory of God, Amen."

The roll being called, all of the members answered to their names.

The PRESIDENT. The Sergeant-at-Arms will notify the counsel for respondent that the Senate is in session.

Mr. REDICK. Mr. President, I rise for the purpose of asking of this honorable Senate, that we have until to-morrow morning to finish our affidavit. I have drawn up an affidavit or petition to this honorable Senate, that we have discovered new testimony since this case was submitted last Saturday, bearing directly upon the deposit of this money. Several of the other articles have been abandoned by the Senate, and we have been trying to find out something more definite about the deposit of this money. We have a witness whose testimony will be received, bearing upon that charge. But first and foremost, Senators, we never will believe that there is a man among your number who wants to inflict punishment upon David Butler unjustly. We know there are men among you, who, if they vote "Guilty," will vote with tears in their eyes. For that reason I have put in my petition another clause, sworn to by David Butler.

"In the matter of the impeachment of David Butler, Governor, &c."

And now comes the respondent, and represents to this Honorable Court, that since said matter of impeachment has been submitted to the Honorable Senators, respondent has discovered new and material testimony for his defense; that if permitted he can prove by \_\_\_\_\_, and who will swear to the following facts:

\* \* \* \* \* Respondent further says that he believes, and is so informed by his counsel, that he, respondent, is a competent witness in his own behalf, under and by the spirit

and terms of the laws of this State; that respondent, if permitted by this Honorable Court to testify in his own behalf, will swear that the certificates of deposit introduced in evidence in this cause, in support of the first article in said articles of impeachment, were made out without his knowledge, and were not delivered to him for three or four months after the time they bear date, and not until after he had agreed to borrow the money from the State, by the consent of James Sweet. That he directed Brock to collect the money from the First National Bank, and put the same in the State Treasury, which was done. Respondent says that the reason why his counsel did not offer him, this respondent, as a witness before, was for the reason alone, that it was their advice and this respondent's desire, that the cause should be tried upon purely disinterested witnesses, so far as the defense was concerned; having the utmost confidence that a perfect defense could, and was made out, so far as the deposit of said money in the Treasury was concerned. But fearing that there may be doubts in the minds of some of the Honorable Senators, and by reason thereof do this respondent gross injustice."

Then again, Section 2:

"In the matter of the impeachment of David Butler, Governor, &c.

STATE OF NEBRASKA, } ss.  
Lancaster County, }

Nelson C. Brock, being first duly sworn, deposes and says: That since he gave his testimony in the above entitled cause he has had a long interview with Governor David Butler, touching said testimony and has become satisfied that at, or about the time the sixteen thousand and odd dollars were brought from Omaha to Lincoln by him he sent Governor Butler a voucher, or statement, showing the amount. That the certificates of deposit were made out at the time they purported to be; but he has become satisfied from his talk with said Butler and other circumstances, that they were not delivered to him until the last of August or first of September; and when delivered to him, some arrangement had been made between said Governor and the Treasurer about

loaning the money, but what the arrangement was, this affiant does not know.

Subscribed and sworn to before me this 27th March A. D., 1871."

Now, Senators, this petition, so far as it goes, simply asks you to permit David Butler to come upon this stand and swear before you that he paid that money. And what are you sworn to do? The very object of interpolating that oath with the word "justice" was to let nobody swear who was not free to rely upon the testimony, and your oath is that you should do justice upon the law of evidence. Now, Senators, I ask you to permit David Butler, in justice to him, to come before you and tell his story; if you don't believe him, then brand him as a liar. You are not bound upon your oath to keep out this man's testimony. I ask you to let that matter come up here before you, and then if you convict him, convict him upon his own testimony. Senators, we come in good faith, and we ask you to permit us until to-morrow morning, or until this afternoon to interpolate the new facts which we can prove. Give us a chance we ask in the name of God, to establish our innocence. I say that there are men in this Senate to my own knowledge who will be moved by justice and right. I therefore ask you to permit David Butler this one chance of establishing his innocence. If that man Brock, who is not so bad a man as he has been represented, if he should come in here, after having his memory refreshed by a talk with David Butler, and swear a little differently than he has already sworn, will you not admit his testimony? Give this man before you, whom you have got tied up by the law, give him a chance to show

himself clear and free of all the charges if he can. Brock is in doubts about dates, and he says he may have been mistaken in this regard, and we ask that you now give him a chance to set this matter right. This is a case of life and death. I do not mean you to understand that, if your decision is against David Butler, he will resort to violent means to end his life, but I do mean that I know, from my acquaintance of Governor Butler, that he would prefer to lose his life to having the infamy and disgrace heaped upon him which will result from a conviction in this case. I am going to stand by this man as long as life lasts, because I am convinced that he is innocent. Tell the Senators, Estabrook, that there is no precedent for this in the Hubbell case; tell them they can cite to nothing like this in that celebrated case.

Mr. ESTABROOK. Will you please address the Senate?

Mr. REDICK. I am addressing the Senate right over your head, sir. There is no precedent for this, gentlemen, in the Hubbell case, but there is a precedent in the High Court of Heaven, where justice will be dealt out unbiased by personal feeling, prejudice, or malice.

Manager PORTER. Mr. President, I agree with the counsel for the respondent fully, in reference to what he said would be the effect of finding this respondent guilty; but I remember when this case first came up, of hearing that the respondent insisted upon the utmost letter of the law being followed, and when the matter of continuance was brought up by the managers, they objected to it because we did not file affidavits setting forth what was expected to be proved by those witnesses, and it was refused. Now, sir, as this trial has proceeded,

ample opportunities have been given to the respondent to produce his testimony, and by their own admission they had made their defence, and now at this time they want to open up this case again. I believe that the request is unprecedented and unwarranted, and that it is now brought in here to defeat the ends of justice.

Mr. ESTABROOK. As a usual thing, we have the tragedy first, then comedy, but this order has been changed in this case. The gentleman came here so full of his jokes that it went into the papers that whenever he rose there was a laugh in the galleries. He seemed yesterday to be trying me for making fire-wood of my door-yard fence, that might be denominated the farce; but now he comes in and does whine so pitifully that he almost moved me to tears, and this is the tragedy part. What is most amusing of it all is that we filed an application here, we had to state who our witnesses were and what we expected to prove by them. But this affidavit states that a blank person, will testify to blank. That is to say, that blank will testify to blank, and on that he asks a continuance. If you grant that application, you throw the door open for us to produce rebutting testimony, and we can bring in any of our witnesses, whom we have not been able to procure, here now, and then, being presented in a new light, the whole thing will have to be argued. It seems that the absent witnesses have all turned up suddenly, and perhaps if this is granted, we can have some of them here. They seem to have dropped right in here like frogs after a thunder storm. For my own part I am not going to oppose this continuance.

Senator HASCALL. I would offer the following:

"*Ordered*, That this case stand adjourned until the last Tuesday in May, 1871, at 3 o'clock P. M. of that day, and that at that time both the Managers and the respondent be permitted to introduce any new evidence that they may have, touching the matters in controversy in this case."

The PRESIDENT. Senator Hascall offers the following—(order read.) The chair is of the opinion that the motion is not in order.

Mr. REDICK. Mr. President and Senators: We would like to consult together a few moments. (After consulting.) We will consent to that motion. I think the counsel and Managers can agree among themselves upon it.

The PRESIDENT. The chair will submit the motion if both parties desire it.

Manager DOOM. Mr. President: We will not agree to that.

The PRESIDENT. Then the chair will hold that the motion of the gentleman from Douglas is not in order.

Mr. MARQUETTE. Upon the broad principle of truth and justice, we ask to be allowed to bring this witness upon the stand. And we have other witnesses, who, if we are granted the right, if this adjournment takes place, will prove the same facts. We have asked nothing before, and I think it nothing but fair this be granted. The Managers have asked, and been granted, a continuance. They have had time to prepare their arguments; and we now, pending an adjournment—[Here the counsel was interrupted by a general consultation among the Senators, and sat down.]

Manager PORTER. It seems to me this continuance now asked for, if I understand the question, is to prepare affidavits for the purpose of securing a longer continuance. Now,

we are certainly opposed to the granting of this continuance at this time. In the first place we do not believe the respondent a proper witness. In the second place we do not believe this a proper time to have his testimony introduced. It appears to me, Mr. President, as though it was trifling with this Court, after having passed through the trial, to come in and ask a continuance of this kind. Is it expected that the members of this Court can remain here in session, or the Managers to prosecute this case? I apprehend it is not for the purpose of reaching the ends of justice, but to defeat them. How long do the members of this Senate desire to be followed around to have these influences brought upon their minds for ever, until tired out and weakened, and the court fallen to pieces of its own weight by this kind of practice? I would be glad if I could consistently consent; but I do not believe it is for the purpose of receiving justice, but to defeat. I do not believe it is in accordance with the rules governing this court, or the witness a competent one to testify on his own behalf; and if he was a competent person, this is not the time. It is asked for the personal convenience of the respondent, and for the purpose of doing injustice to the people of this State.

Mr. BRIGGS. It seems to me the honorable Manager does not comprehend what we are asking for. We are not asking a continuance. We never have asked one. What we are asking now is simply this—that we have time to prepare the affidavit Mr. Redick has—not a continuance. I do not know but we are ready to proceed, if this application be granted, to-morrow morning. And I ask, Senators, if

they did not have time to prepare affidavits themselves? Mr. Redick has explained the situation. It is all the application we have at this time—simply a few hours to place our affidavit in shape, that we may present it to this court. The member for Douglas has made a motion to continue the case for sixty days. It is true we may consent to that application. All we ask now is time to place our affidavit in form. Then senators will see it, and be able to decide whether our application can be granted or not. You will bear in mind we have not detained this Senate; but upon the other side the honorable Managers have asked for a continuance of sixty days and now they are, all at once, in a hurry about this matter. We have not detained you an hour. All the applications for delay have come from the other side. And now we ask, in the name of justice, that this man may have an opportunity to go on the stand himself. I believe, with Mr. Marquette, that he is a competent witness; and we expect to produce other witnesses these drafts did not come into his hands until long after they were issued. We ask that we may have time to prepare our papers.

Senator TUCKER. I desire to ask the counsel if two o'clock will be sufficient time.

Mr. BRIGGS. We would ask till to-morrow morning.

Senator TUCKER. I make my motion till nine o'clock to-morrow morning.

Mr. REDICK. And, Senators, recollect this—that what we propose to prove we will put on paper and will not ask you to take our word for it. And after you read it you can say whether it is competent or not. We ask nothing unfair. We ask only the right to defend ourselves; to—

Senator THOMAS. I move that the Senate, sitting as a Court of Impeachment, retire for consultation.

The PRESIDENT. The question is upon the motion made by the gentleman from Nemaha, that the Senate retire for consultation. As many as are of opinion that the motion prevails, will, as their names are called, answer "aye;" as many as are opposed will answer "no." The Clerk will call the roll.

The following is the vote:

Yeas—Cropsey, Gerrard Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, Mr. President—11.

Nays—Brown, Hawke—2.

The PRESIDENT. Eleven members having voted in the affirmative and two in the negative, the motion is adopted and the Senate will now retire to the Supreme Court room.

On the return of the Senate to the Senate Chamber, the President called the house to order.

The PRESIDENT. The Senate having had in consideration the motion for allowing the defendant till 3 o'clock this afternoon to perfect and file his affidavit and application, have adopted the following order:

"If the defendant's counsel desire to make application to admit new testimony, or for a new trial, or for a continuance, to do so in writing, and that said application be heard by the Senate upon affidavits presented by counsel for defendant, and without debate by counsel of either party."

Mr. REDICK. I shall ask permission of the Managers to withdraw that affidavit, and substitute one more complete.

Manager DOOM. If I understand correctly the order adopted by the Senate, the counsel for defendant will submit affidavits, and upon that application, counsel will not be allowed to

debate. I understand that they will allege in their affidavit, that they can prove certain facts, and this is virtually admitting testimony. I suggest that we be allowed to file a counter statement.

Mr. REDICK. Mr. Doom, can you cite a precedent for this?

Mr. DOOM. I don't know as you can cite a precedent for what you ask.

The PRESIDENT. This discussion is entirely out of order.

Mr. MARQUETTE. Mr. President, I do not think it necessary to take up any more time. We want all the time we can get.

Senator TENNENT. I move that the Senate, sitting as a Court of Impeachment, now take a recess till 2 P. M.

This motion being put, was carried.  
Senate adjourned.

#### Afternoon Session.

The PRESIDENT. The hour fixed for the trial of David Butler, Governor of the State of Nebraska, having arrived, the Secretary will call the roll.

Roll called, and all the Senators present.

The Managers and their counsel and respondent and his counsel present.

The PRESIDENT. GENTLEMEN: Under the order adopted by the Senate, I will inform the honorable counsel for the respondent that the Senate will now hear their application.

Mr. Redick read the following:  
In the matter of the impeachment of David Butler, Governor, &c.

Now comes the respondent and moves this Honorable Court to grant a continuance for thirty or sixty days from this date, and in support of said motion makes the following affidavit:

STATE OF NEBRASKA, } ss.  
LANCASTER CO.

Governor David Butler, being first duly sworn, deposes and says that, since this cause was submitted to the Honorable Court on Saturday last, this respondent has discovered new and material testimony to his defense. That he has ascertained this morning that the power of attorney given to Nelson C. Brock was executed to said Brock by me, as Governor of this State, and that at the time he, said Brock, collected said funds, at the First National Bank, he stated that he was Deputy State Treasurer, and called there to collect the money due the State, and if not in these exact words, in words of the same import and effect. That he is informed by John I. Redick, one of his counsel, that he called at the office for the power of attorney, or a copy thereof, and he was informed by Mr. Kountze that the power of attorney was returned to Washington with the draft. Affiant further represents that he verily believes that the power of attorney ran to Nelson C. Brock as Deputy State Treasurer. That he can only prove these facts by the production of the power itself; and if this Honorable Court will grant him the time herein asked, he will produce the power of attorney, or a certified copy thereof, before this Honorable Court when they shall again meet.

Affiant further says that he can prove (and learned for the first time this morning) by C. H. Gere that Nelson C. Brock told him that he sent Governor Butler a voucher for the amount of money so deposited in the Treasury by affiant; and affiant further says that he (affiant) will swear, and hereby makes oath, that he received the voucher, but after diligent search of all his private papers is unable to find the same.

Affiant further says, that he believes, and is so informed by his counsel, that he, respondent, is a competent witness in his own behalf, under and by the spirit and terms of the laws of this State. That respondent, if permitted by this honorable court to testify in his own behalf, will swear that the certificates of deposit introduced in evidence in this cause in support of the

first article of impeachment, were made out without his knowledge, and were not delivered to him for three or four months after the time they bear date, and not until after he had agreed to borrow the money from the State, by the consent of James Sweet; and affiant further states that he directed said Brock to collect the money under the power of attorney, and put it in the State Treasury, stating to said Brock, at the time, that the money was not affiant's, and he had no interest in it, but the same belonged to the State, and affiant supposed the same was in the Treasury, as all other State monies; and at the time said money was loaned to him it was not the identical funds in question, but was out of the general funds of the State, and loaned to affiant in the usual way, as other monies were loaned. Affiant further says that he has just learned from good authority that he can prove by the Register of Deeds of Pawnee County, that the first mortgage, which is spoken of in the testimony in this case, was transmitted by the State Treasurer to said clerk, together with the usual recording fee, directing him to record the same. Affiant further says that he has learned since the submission of said cause, that he can prove by Nelson C. Brock that he took the acknowledgment of said mortgage of this affiant and his wife, as notary public, but omitted to attach his signature to the acknowledgment, as notary public. Affiant further says that he has learned since the submission of said cause, from Seth Robinson, late Attorney General of the State, that he (said Robinson) knows, or is quite certain, that said mortgage is in existence, and not destroyed; and affiant says that he believes that the same can be found, and that he can produce the same if due time is allowed him to make search therefor, and read the same before this honorable court. Affiant further says that he will swear, if permitted to by this honorable court, that all the delay and latches in and about the execution, delivery and record of the second mortgages and bonds was occasioned almost entirely by the acknowledged dilatory habits of the Treasurer, James Sweet, but without the least intention on his part

to wrong the State. But this affiant admits that he, to some extent, was to blame for this carelessness, but swears that the carelessness on the part of both himself and Sweet was to a great measure induced and brought about by the perfect confidence they had in the integrity and good intentions on their part, in the whole transactions, never dreaming that disgrace or infamy would ever be the result.

Affiant further says, that he is informed and believes, that he can disprove and set at rest the statement made by Nelson C. Brock, that he paid a note for affiant at Omaha in the sum of three hundred and odd dollars, not that he wishes to impugn the motives of said Brock in making the statement that he did, but to show that he was entirely mistaken.

Affiant further says: that he has learned, after having a conversation with James Sweet touching the loan of said money, that he believes he can prove by said Sweet, that he, said Sweet, first suggested to affiant, and as early as July or August, 1869, that he had better loan that amount of the State money and pay interest on the same, than to let it lay, drawing no interest, and that all delays and latches about execution, delivery and recording of said mortgages was more occasioned by the usual negligence of said Sweet, than that of this affiant, but still not desiring to screen this affiant from blame entirely in this regard.

Affiant further says that he can prove by said Sweet, that for a considerable length of time they continued to invest State money in government securities, and had done so to the extent of \$50,000 or \$60,000, and in a short time, by reason of the depreciation and shrinkage of said securities, the State had lost \$7,000 or \$8,000 in each, and it was then, that said Sweet and this affiant, and the Land Commissioner, upon consultation came to the conclusion that they had better, for the best interests of the State, invest the surplus money in good real estate securities, and hence the several loans referred to in said articles of impeachment, were made.

Affiant further says that he can prove the following fact, which he has



just learned; to-wit: that when Brock was asked to report the interest paid on said money, he replied to the witness, who will so swear, that although the interest was not in fact paid, but Governor Butler has warrants to the amount of \$2,000 or \$3,000 in bank, that he would pay the interest and take the same out of the warrants, which he was authorized to do.

Affiant therefore prays this honorable Court, to grant to him a continuance for such time as you shall think right and proper, in order that this affiant may make this defence perfect and complete, and that justice and nothing but justice may be done.

DAVID BUTLER.

Sworn and subscribed before me, this 27th day of March, A. D. 1871.

R. P. BEECHER,

[Seal.] Notary Public.

Senator HASCALL. I move that the Senate retire for consultation.

The PRESIDENT. Gentlemen: It is moved that the Senate now retire for consultation on the application filed by the respondent. As many as are of opinion that the Senate should retire, will, as their names are called, answer "Aye;" as many as are of the contrary opinion will answer "No." The clerk will call the roll.

The clerk called the roll, and all the members answered in the affirmative.

The Senate then retired.

IN THE SUPREME COURT ROOM.

The Secretary called the roll and all were present.

The President stated the question for consideration.

Senator Tucker moved that an application for a continuance be granted, and that the case be continued until Tuesday, the 30th of May.

Senator Thomas opposed a continuance; there was none asked. The counsel for the respondent urged that a continuance be refused the Managers, because they were all ready. The law allowed every person one

fair trial; they occupied the position of a jury, and should be ready to render their verdict. The application would be inadmissible in any court. The affidavit said: "Affiant further says he has learned, after having a conversation with James Sweet, touching the loan of said money, he believes he can prove by said Sweet that said Sweet first suggested to affiant, and as early as July or August, 1869, that he had better loan that amount of State money." If James Sweet would swear that, why did not they attach his affidavit; but this merely said that "after having a conversation, he believes he can prove so and so." They (the Senators) had given one fair trial, when the counsel for respondent said they were ready, and justice now required they return to the Senate Chamber and say whether David Butler was guilty or not. If they adjourned for sixty days the whole thing became a perfect farce, and it would be evident to the people of the State that they were shirking the responsibility the law had put upon them.

Senator SHELTON said they commenced the trial on the fourth of that month; the Managers asked a continuance of sixty days, which the counsel for the respondent opposed, saying they were ready to proceed at once to trial. The Senate had continued along from day to day till, on the part of the respondent, the counsel said they were perfectly satisfied and willing to submit the case without argument. They occupy two days in closing their arguments, and the Senate decided to render its decision that day at nine o'clock. At that time the respondent came in and asked for time to reproduce the same men to testify that what they swore to before was wrong. Now he was willing the

case should be closed, and if any man believed Governor Butler was not guilty, let him take the responsibility and say "No." He should vote against continuance.

Senator HASCALL could not regard it as a continuance, merely for a continuance to obtain new testimony. If a continuance at all, it was one for a new trial. There was no such thing as continuing a case after it was once closed, argued and sent for decision. If the counsel for the respondent had discovered new testimony which would authorize the Senate, as a court of law, to say a new trial should be granted to reliable evidence to be brought in, which had been found since the trial was closed, that was a different thing. If sufficient showing was made in the affidavit to authorize the granting of a new trial, he was in favor of it. But he failed to see where the newly discovered testimony existed. Yet if the respondent had procured testimony he did not know how to procure before, then he was in favor of a continuance being granted, and both sides to be allowed to introduce new testimony. He took the same position as the gentleman from Nemaha.

Senator THOMAS again spoke and said this was a matter of mere trifling with the Senate, and would not be tolerated by any Court in the land. They had a duty to perform and he was ready to do his.

Senator CUNNINGHAM said there was a high official upon trial for a thing, that, to him, might be dear, perhaps dearer than his life. And he was reminded, by the arguments there, of the technical foils attempted to be thrown around Gov. Butler, of the demand that was made to obtain the pound of flesh by the usurper. It might be that the bond of

the law would give the pound of flesh in that instance, if strictly enforced according to the laws of practice in the courts in which the gentleman from Nemaha had practiced; and it might be that the pound of flesh should come from near the heart of that man; but he apprehended they were not to be tied up there by the rules and quibbles of lawyers, under which they had been used in prosecuting their victims. He apprehended that the Senate had the right to take into consideration the importance of the case; that they have the right to consider what that man had at stake; they were on oath to do justice; and there was an affidavit there in which there were some essential things alleged; there was a vital question involved there, whether a certain sum of money was ever put in the Treasury of the State. It had been in evidence that the power of attorney was given Brock as Deputy Treasurer, to get that money and bring it from Omaha, and the question had been raised as to what the form of that power-of-attorney was. Whether it was directed to him as Deputy Treasurer, by David Butler, as an individual. David Butler believed he could procure that power-of-attorney; and if he believed that power-of-attorney would show that Brock was directed to bring that money, not as agent for David Butler, but as Deputy Treasurer of the State, was not that a vital and important point in the evidence? And their affiant swore he had just learned this power-of-attorney was sent to Washington, and that it was there in some of the departments of the Government. And there was another fact in that allegation that a voucher was given at that time, and the affiant stated he could prove, by witnesses, that that voucher was

given; and by Brock himself, the party who issued the voucher, the form of which would have something to do with the merits of the case. Without going further as to the allegations of the affidavit, that was sufficient, in his opinion, for granting the continuance. He did not assume to say as to how much time, or that a continuance be granted for any considerable time, but it did seem to him, if there was any evidence to prove the innocence of that man, they should allow him the benefit of it. He hoped that the sentiment expressed by the gentleman from Nemaha would not prevail—that they go directly to the Senate Chamber without allowing the respondent an opportunity to bring in that new evidence; but that they should allow him to bring in all the evidence he could, in a reasonable time.

Senator BROWN could not agree with the gentleman from Nemaha to go into the Chamber and vote then, in view of the application before them; more especially as the application was made by a man who had enjoyed the confidence of the people for so long a time. He was willing to vote for a continuance for a reasonable time.

Senator KENNEDY said if they had any assurance that they would produce evidence that would clear the Governor, then he would most assuredly vote for it. But, if they found enough evidence on the school fund question there was enough to impeach him on the other points. All his feelings were towards the Governor; but any man who placed himself in antagonism to the laws should be held responsible to the law. He believed David Butler had had a fair trial, and if he proved the money was in the

Treasury he had not proved how it got out.

Senator CROPSEY agreed that the views expressed by the Chairman, that a man in the position of Governor should have an opportunity to produce any new evidence he could. Considering the serious character of the case, and also that Governor Butler was, to a certain extent, undergoing punishment, he should vote for a continuance.

The PRESIDENT then put the question, with the following result:—

Yea—Messrs. Cropsey, Gerrard, Hascall, Hilton, Tucker, Tennant, Mr. President—7.

Nay—Messrs. Brown, Hawke, Metz, Kennedy, Sheldon, Thomas—6

The Senate then returned to the chamber.

After the Senate returned to the senate chamber, the house was called to order by the President.

The PRESIDENT. The Senate have had under consideration the application filed by the counsel for respondent, and have adopted the following order:

*“Ordered.* That the application for continuance be granted, and that the case be continued until Tuesday, the 30th day of May, 1871, at 3 o'clock, P. M., and at that time both parties may introduce any further testimony that they may desire.”

Senator TUCKER. Mr. President, I move that the Senate, sitting as a Court of Impeachment, do now adjourn until Tuesday, May 30th, 1871, at 3 o'clock, P. M. (Motion adopted.)

The PRESIDENT. Gentlemen, the motion having been adopted, the Senate sitting as a Court of Impeachment for the trial of David Butler, Governor of the State of Nebraska, stands adjourned until Tuesday, May 30th, 1871, at 3 o'clock, P. M

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FINAL PROCEEDINGS  
OF THE  
IMPEACHMENT TRIAL.

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PART V. VI

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## FINAL PROCEEDINGS.

LINCOLN, NEBRASKA, }  
TUESDAY, May 30, 1871, 3 P. M. }

The Senate was called to order by C. H. Walker, Secretary.

All the Senators present.

A communication was read from Acting-Governor, W. H. James, announcing the resignation of President E. E. Cunningham.

On motion of Senator Tucker, Senator Brown was elected temporary President.

On motion of Senator Gerrard the Senate proceeded to the election of a permanent President.

After nineteen ballots were taken, Senator Sheldon was elected, who declined to serve; and on the twenty-first ballot, Senator Hascall was elected.

The Senate then, at 8 P. M., adjourned till to-morrow morning 9 o'clock.

WEDNESDAY, May 31, 9 A. M.

Senate met.

After the Journal was read and approved, Acting-Governor James administered the oath of office to President Hascall.

The roll was called and all the Senators responded to their names.

The PRESIDENT. I have received the following communication, which the Secretary will read:

*To the Honorable President of the Senate:*

SIR.—I take the liberty, upon the re-assembling of your honorable body, to communicate with you upon the subject of the five per cent. fund.

Early in the spring of 1869, soon after the collection of that fund, I made a loan from the State of Nebraska of \$16,881.26, and afterwards amply secured the same by bonds and mortgages.

This was done in perfect good faith, and with the understanding that the loan was perfectly legal.

Many of my fellow citizens have differed with me as regards the legality of the loan, and the sufficiency of the securities, and while I am unchanged in my opinion on the subject, and conscious that I have, at no time, done other than my duty in the premises, I am ready and willing (in order that this subject of dissension may be disposed of), to deposit in the State Treasury, the full amount of said loan with interest from the 25th day of May, 1869—the date of the arrival of the fund in Lincoln, in charge of the Deputy State Treasurer,—and I ask for the passage of an act providing for the cancellation of the securities.

I sincerely trust that this proposition on my part may be received in the same spirit in which it is made, and that harmony may again prevail in the administration of our State Government.

DAVID BUTLER.

EXECUTIVE DEPARTMENT,  
Lincoln, May 30, 1871.

The PRESIDENT. What disposition will the Senate make of the com-

munication? If there are no suggestions, the next order of business will be taken up. Are there any resolutions?

Senator THOMAS. Mr. President: I offer the following:

*Ordered.* That at 11 A. M. to-day, the Senate resolve itself into a court of impeachment for the consideration of Articles heretofore presented by the House of Representatives against David Butler, Governor, as is provided for in our 24th Rule as follows:

24. If the Senate shall, at any time, fail to sit for the consideration of articles of impeachment on the day or hour fixed therefor, the Senate may, by an order to be adopted without debate, fix a day and hour for resuming such consideration.

Which was adopted and a recess ordered.

#### AFTER RECESS.

The Senate met at 11:15 A. M.

The PRESIDENT. The time having arrived, fixed by the order of the Senate for resuming the consideration of the articles of impeachment against David Butler, Governor of the State of Nebraska, the Senate will now resolve itself into a court of impeachment, to proceed with said case, and the Sergeant-at-Arms will make due proclamation.

SERGEANT-AT-ARMS. Hear ye, hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the Honorable Senate sits as a court of impeachment for the trial of David Butler, Governor of Nebraska.

The Journal was then read, when Mr. Redick rose and said: "Mr. President: I desire to say that my impression, from hearing the Journal just read, is that the motion for a continuance, made on the last day of the court, came from the side of the Managers, or from the Senate. The counsel for the Respondent, it is true,

asked for a brief delay in order to secure and introduce new testimony. But I do not think we asked for sixty days' time. However, the original order will show.

The SECRETARY. The affidavit of respondent shows that he asked for a delay of thirty to sixty days.

Manager MYERS. Mr. President: I desire to state that the Managers on the part of the House of Representatives have retained Judge Wakeley to assist in conducting the trial of the articles of impeachment. Judge Wakeley is now present.

Mr. ESTABROOK. Mr President: It will be rembered that when this case reached a conclusion on the former trial, the counsel for the respondent asked for a continuance, I think, at least for sixty days, to enable the respondent to introduce further testimony. The Senate very courteously granted that request. Therefore, the Managers signify their readiness to go on with the trial, now that the period of that continuance has elapsed; and hope the respondent and his counsel will at once proceed to introduce whatever new testimony they may have.

Mr. REDICK. Mr. President: I do think it is true that the motion for a continuance was on our part, but the Senate will well recollect that when we first made the application, we only asked until in the afternoon, our affidavits were given so, and we expressed at the time that we wanted simply a few days to get certain testimony that was in Washington, that was one branch of our testimony, but the motion to adjourn sixty days came from the Senators, or from the other side, I do not know which, so it must not be charged upon us that we asked this longer time, although it may have been embraced in our motion.

Some new testimony we thought we had,—and think yet—we have made some effort to obtain and if it becomes necessary, perhaps we have it. I allude to the testimony of this Power of Attorney, which, perhaps, would have a good deal to do with this school fund loan, which seems to be the bone of contention in this whole difficulty. Now, the Governor says he trusted to me to send and get the copy; I say, I trusted to the Governor. Our State and United States Courts have been in session all the time since I went home and to tell the truth, Senators, I never thought of it; the Governor has not got the paper, and I cannot say at this time, Mr. President, what we will do in regard to taking further testimony; we will be compelled to submit our case just where it is, and there being some excitement in the house this morning, I have been in and had not a chance to talk with the Governor. I suppose there is no great hurry about this thing. If the honorable gentlemen on the other side will continue this case until to-morrow morning at nine o'clock, we will come in prepared to do something—go on with the trial and introduce some new testimony we can reach, or submit it upon what we have already taken. If this case goes on, Mr. President, there are one or two preliminary questions that, perhaps, ought to be settled. May we have them or not?

I will simply say that in behalf of the balance of the counsel and the Governor, that at this present time we are not prepared to say what we will do. If the Senate will say when this case shall proceed, we will work up our opinions. Only fix the time when it shall go on. It is admitted by all that this case has been run a little

loosely on all sides, and we are not quite prepared to say what we want to do. To-morrow morning will give what time we want to determine what we will do in this matter.

Manager MYERS. We have had so many requests and grants for delay, and it would be a very pressing necessity that would induce the Managers, on the part of the House of Representatives, to grant or consent—whatever the Senate may do—to a further continuance. We are adjourned for sixty days with this understanding, that the counsel for the respondent would come here prepared with their evidence, which they boasted they had ready, and would have ready to-day, and they are now here without that testimony. The counsel for the respondent has not even seen the Governor. That is a fault of his own, for which the Governor is not responsible.

Mr. REDICK. That is, this morning.

Manager MYERS. The gentleman has had ample opportunity of seeing the Governor. We would like to know, before proceeding further, what the character of that testimony will be—if it is testimony in chief it would compel us to introduce our testimony. But on behalf of the Managers I would say that we are ready to proceed with the case now in its regular order, as laid down by the rules of the court; or we are ready now, without introducing any further testimony, but submit it immediately to the Senate. We have nothing to prepare. We stand here on all-fours.

Mr. REDICK. I hope the gentleman did not misunderstand me—I do not think he is smart enough—when I said I had not seen the Governor. I did not mean to say that, and do not



think you (to Manager Myers) understand me so; if you do not, you ought to be frank enough to tell your friends what you did understand.

Mr. ESTABROOK. Mr. President: It seems to me that after all this dally, and at the suggestion of the counsel for the respondent, made with a great deal of eclat, and pomp of circumstance, with the affidavits on the file that they had discovered new testimony and new witnesses, and desired time to procure them, we are entitled at least, to have it made known here whether they have any testimony or not; whether this thing is again to be tried, again to be heard, or whether it is to be submitted or not; what is the desire of the party who made the motion; whether it was in good faith, and whether he intends to maintain that faith before this Senate; whether he has anything further to show? It seems to me that it is due to the Managers and the Senate for them to indicate whether they mean to go on with the testimony they pretended to have, and swore they had, or whether it is to be dropped here; or, if it is to be adjourned for the purpose of manipulating the other branch of this body, let us know that.

Mr. REDICK. We are not desiring to do that at all General; there is a question to settle like this—I do not know whether it is a difficult one or not—whether we are to try this all anew or not, that is a little matter that will figure here quite extensively. There is a new juror, Mr. Lynch. He is not here. we are expecting him every day. If a new juror comes in the box, I would like to know how we are going to try this latter end of the case, and how he is going to render a good solid verdict, on his oath, without knowing what he swears? It seems to me this is no small matter to

pass on the impeachment or discharge of the Governor of the State—especially of a young State like Nebraska—to bring in a new juror who never heard a word of the testimony, and do not know whether he has ever seen the proceedings. Bringing him in here, have him pass guilty or not. Why it is a matter worthy of thought, we are waiting for him to come or not, so as to have the Governor and his counsel decide whether they ought to go into this thing anew, or whether to go on and introduce further testimony under the resolution passed on the 30th of March, and that is what is the matter. If anybody knows whether Mr. Lynch is coming or not, we can settle one question on the part of the Governor and his counsel. He is not here, and supposing we want to introduce a part of our testimony, proceed with this case tomorrow, and next day, and then he should come, see where we would be. There can be no fair verdict, no fair trial under those circumstances unless we were organized in such a way as to bring to his consideration every word that fell from the lips of the witnesses; and beside that, under the constitution and law, every juror who is to pass upon the guilt or innocence of a man is entitled to see the witnesses on the stand, see how he looks, take a look at the way he was got up, and whether they would believe him or not.

Mr. ESTABROOK. In Courts of Chancery?

Mr. REDICK. Witnesses generally take a look at him.

Mr. ESTABROOK. The party determining never sees the witness.

Mr. REDICK. Do you call this a Court of Chancery?

Mr. ESTABROOK. A Court of Justice.

Mr. REDICK. If it is, what is the use of comparing it to a Court of Chancery? It is supposed to be, and is, a Court of Justice. Wherever a man is brought before a Court of Justice, the law and every constitution recommends the right or propriety of that court to see the witnesses as they come from the box, weigh their testimony, and see their conduct upon the stand, and hear what they may say in regard to the case. That is a little matter that really comes into this case. The Governor and his counsel are only waiting to know whether he is coming or not. We should not be compelled to say just what we want to do. We will certainly have to do it soon. We cannot wait until the session is over. We would like to wait until to-morrow. If he does not come then, we will take our chances.

Manager MYERS. Mr. President: I desire simply to say a word, that we, on behalf of the House of Representatives, are here to draw no comparisons of that adjournment to close this case. It is not a question of whether it shall go on or not; that question is decided by the people, who shall at pleasure go on to a terminus. It makes very little difference whether that absent Senator is here or not, or on what stage of proceedings he makes his appearance here. In the trial of Warren Hastings, which lasted over seven years, with which the learned gentleman, I have no doubt, is fully familiar, there were many absentees by death and by resignation. Some went to India, some to the uttermost parts of the earth. Two parties made their appearance, and the trial went on. There was no delay except a little matter of time, such as these gentlemen are in the habit of making. In the case of Judge Addison, in Pennsylvania, who

was impeached for misdemeanors in office—we are in the habit of doing that in Pennsylvania—you are also familiar with this case—I understand Mr. Redick is a native of that State—in the case of Judge Addison—

Mr. REDICK. I am a native of Ohio; count me out.

Manager MYERS. I thought you were from Pennsylvania. In the case of Judge Addison, the Legislature prepared articles of impeachment, ousted him out of his high office as a Judge, and one year elapsed before they tried that case. Three members of the House of Representatives who voted for those articles of impeachment, made their appearance in the Senate, sat upon his trial, and voted for conviction. This is a strong case, showing that it was not allowed to interfere with the High Court of Impeachment. Why should it not operate in this case, and permit us to go on with the case? We are here as Senators, not as jurymen. They do not come up to the level of jurymen. They are here as judges over and above any jurymen that ever existed. They are here as supreme judges of the law to convict. I repeat again, Mr. President, that we are not here for delay. We desire that this man at the bar of the Senate should be acquitted, or, if guilty, that he should be pronounced guilty. My own personal preference is that he should bring his new testimony in, as he promises to do. He openly declared here under oath that he had it. If he has it, why does he not come here and produce it, and allow the people here to see that he is innocent by his own proof? We have been generous and kind to him; we have no idea of persecuting that gentleman, and have opened a door for the admission of new testimony, contrary to the practice in any

Chancery, Supreme, or any other Court in the world. After the Senate had solemnly decided to proceed to their chamber, and upon the manner of making a decision, and how far the finish should go, that gentleman steps over and says he has proof by which his innocence can be proved, and now he is not here to-day.

Mr. MARQUETTE. The respondent before this Senate has some rights which the opposite side may not be willing to waive; rights which even his counsel could not waive for him. I think one of those rights is to be tried by a full Senate when all the Senators are here. There are provisions made always in the rules and constitution, by which any public body is organized, and which may be enforced. We meet here to-day and do not see a full Senate. I claim that as a right. By referring to the Constitution you will find out that it proposes that there shall be a full Senate. It is true, probably, that if the vacancy in this Senate was not filled, it would be composed only of twelve members; then we would not be entitled to the right; but it is composed of thirteen members, and I say we have a right to be heard. We have a right to have them all present. It is supposed at any moment this man may be here. I have, at least, heard it so stated that he was upon his way. The last heard of him he said he would be here. I say it is a right we have.

As to the other question, whether we shall go over this testimony or not, we have a right to be heard again before this new party, (Mr. Lynch,) no matter what course was pursued in the Warren Hastings' trial. The Constitution of England is simply her laws. There can be no doubt here that if we choose to raise the question, we can claim to have every one present.

If we are entitled to raise the question whether we have a right to re-hear, there could be no doubt, under our Constitution, about that right. Our Constitution says if the respondent desire, he has the right to confront his witnesses where he is tried, so that by cross-examination he can learn whether a witness were in the habit of telling the same story behind his back as before it; whether he told the same story the second time, or modified the first one. Whatever it may be under the Constitution of England or Pennsylvania in reference to this question, we have the right of re-hearing the evidence before Mr. Lynch, the Senator elect, if he were here. As far as that is concerned, we do not think, at the present time, that we will introduce any evidence, though we have evidence, we think, probably, we could get. As far as the insinuation thrown out by the counsel for the Managers is concerned, of manipulation of the other house, if there is any, I do not know of it. The other side has done as much as we have done. I saw my friend Estabrook circulating a good deal more than myself, and if he makes the charge I simply hurl it back, and defy him to bring forward a man whom I have endeavored to manipulate. I do not think the members of the House of Representatives can be manipulated. He may know better and have been in the business longer; but I do not know or pretend to know. I know a man has some constitutional rights. One is that if three members are expected to arrive every minute, we have a right to a postponement until they arrive. We have a right to say that it ought to be, unless there is a showing that the man will not be here. Having that right, we do not go simply for delay, but that justice may be done; and we ask

that this case be postponed until to-morrow morning.

Senator THOMAS. I would ask that the counsel for the respondent hand the motion in writing.

Mr. MARQUETTE. It is to adjourn until to-morrow morning, at ten o'clock.

Senator THOMAS. I understand that to be, that we adjourn until to-morrow morning at ten o'clock.

Senator HUDSON. I desire that neither the Board of Managers or this Senate should stultify themselves. I understand the ground upon which the continuance is asked is that there is not a full Senate. The minutes will show that I, on two former occasions, called attention to the fact of Senators being absent when it was ruled by the President of the Senate that a full attendance of members was not necessary. I have no objection to the adjournment, but let us, at least, be consistent with the record.

Mr. MARQUETTE. We will let you maintain your consistency.

Mr. ESTABROOK. Let me suggest that the motion embrace the fact that the Senate is not full. Let us have tangible propositions, that they may be settled now. If it is only to adjourn and accommodate parties, they allowing them time to consult, that is one thing. But if the proposition to adjourn is to adjourn because the Senate is not full, and then it is to come again, and the proposition to be made not to proceed because it is not full, then it will be plain.

Mr. MARQUETTE. If they desire us to embody that, we will ask a little time to prepare a motion for a continuance to that effect. We certainly should ask it on that ground.

The PRESIDENT. I do not understand the counsel for the respondent.

Mr. MARQUETTE. I believe, at

one time, there were some few members absent during the argument; but I believe there have been no proceedings had here unless the Court was full.

The PRESIDENT. I would suggest, as it is twelve o'clock, that we retire.

Manager MYERS. I hope not, Mr. President.

The PRESIDENT. Unless some order or motion is made by the Senate—

Senator TUCKER. I move that the Senate, sitting as a Court of Impeachment, take a recess until two o'clock.

The motion was put and carried, and the Senate adjourned.

#### Afternoon Session.

Senate met at two o'clock.

The PRESIDENT. The hour having arrived to which the proceedings were continued, the Sergeant-at-Arms will make the usual proclamation.

The Sergeant-at-Arms made the proclamation.

The Sergeant-at-Arms was dispatched after the Managers, and the respondent and his counsel.

Mr. Estabrook and Mr. Wakeley appeared, followed by the respondent and his counsel.

The Secretary called the roll.

All the members present.

The PRESIDENT. The Court is ready to proceed with the case.

Mr. BRIGGS. Mr. President: We will now offer our motion for the delay which we have asked.

In the matter of the Impeachment of David Butler, Governor.

Comes now the Respondent and asks the Court to delay further proceedings in this cause until 10 o'clock to-morrow morning, for the reasons following:

1. Because Senator Lynch is absent from his seat, but who is expected to arrive to-morrow morning.

2. Because the Respondent desires time until to-morrow morning to produce evidence to show that he has paid into the State Treasury, the sum of money due on the bonds and mortgages mentioned in the answer filed by the Respondent herein.

J. I. REDICK,  
T. M. MARQUETTE,  
and CLINTON BRIGGS.

The PRESIDENT. If there is no objection, I will submit the motion to the Senate; but the proper way would be to have it come as a motion from a Senator.

Mr. WAKELEY. I am directed by the Managers to say that so far as it relates to the absence of a member elect of this body, the Managers deem that a subject for the consideration of the Senate, and which will be acted upon by that body without any suggestions on the part of the counsel upon either side; and so far as it relates to the matter of the money, I am directed to say that the Managers oppose the continuance of this cause upon that ground, for the reason that the evidence it is proposed, on the part of the respondent, to offer, will be irrelevant and immaterial, having no bearing upon the guilt or innocence of the respondent of charges preferred against him; and with this statement of the views of the Managers, we are willing to submit the proposition to the Senators.

Mr. REDICK. Mr. President and Senators: I think that the honorable counsel is mistaken when he asserts that the evidence we propose to show is irrelevant and immaterial. Now, I can show you, Senators, wherein it would be material. If I cannot, I think I will concede the point. Suppose a vote was taken here, as to the guilt or innocence of David Butler, and suppose you had before you no testimony that he had refunded to

the State the money that you are after, together with the interest thereon—being, perhaps, \$3,000. This interest would not have been got if the money had remained in the State Treasury. Now he proposes to refund the principal and interest, which interest, as I have said, would have been derived in no other way, and I ask you if this is not to have an effect with regard to the degree of punishment which would be inflicted? If you find he has refunded to the State, the money he borrowed in good faith, I say, that if you do not acquit the respondent, at least you will not disqualify him. We offer this testimony for the purpose of mitigating the punishment.

Mr. WAKELEY. Mr. President and Senators: In making the suggestion I did on behalf of the Managers, we did not purpose to raise the discussion that has taken place as to the relevancy of the testimony. Our purpose was simply to protest that we would oppose the reception of evidence on that ground, and did not consider it necessary, at that time to give our views to the Senate with regard to the testimony.

The PRESIDENT. All in favor of the proposition for the continuance asked for by the respondent, will, as their names are called answer "Aye;" contrary, "Nay."

Those voting in the affirmative were Messrs. Hilton and Tucker—2.

Those voting in the negative were Messrs. Brown, Cropsey, Gerrard, Hawke, Metz, Kennedy, Sheldon, Thomas, Tennant and Mr. President—10.

The PRESIDENT. Two members having voted in the affirmative, and ten in the negative, the motion is lost.

Mr. REDICK. Mr. President, that disposes of that motion. I have one

other proposition to make. I will ask the Senators to take some action upon it, as I don't consider it proper for me to make the proposition myself; but this is a question which will arise with regard to the absent Senator. Some say he will be here by to-morrow morning. If we should proceed with this trial, we propose to close it up to-day, or at least come to a vote between this and to-morrow night. It is proper this defendant should know what the vote is. I propose that it is a fair proposition that it shall be determined by the Senate in some way how many votes it will take to convict. I suppose it will take nine, but we would like to have the matter put upon some certain basis. Our Constitution says, "No person shall be convicted with a vote of two-thirds of the Senators. Beyond all doubt, it means two-thirds of all the Senators. I don't think there is any doubt about that.

Mr. MARQUETTE. If the Court please, we simply think, from the peculiar wording of our Constitution, that it is proper counsel should be heard upon this point. In one part of our Constitution it says that the Senate shall consist of thirteen members. It says that thirteen persons shall constitute the Senate, and it says that the vote of two-thirds of the Senators shall be required to convict; meaning two-thirds of what the Constitution says shall constitute the Senate.

Mr. ESTABROOK. Mr. President: It was among the wisest words ever uttered by the lamented Lincoln, that "it is better to never cross a river until you come to it." Now, I said this is no time to argue with regard to what shall be the judgment given. I believe that this Senate is to decide what action it will take with regard to the absence of the Senator. This other

question is one we have not come to yet.

Mr. REDICK. General, I think, out of pure magnanimity, you would be willing to settle this matter now. We are entitled to have the Senate say by a vote, now, how many votes shall be required in order to convict; because, if this Senator should get in to-morrow, for instance, he can take the testimony already given into consideration, and we would like to know whether this case is being tried before this body, or some other. I would like to know how many we are trying this case before,—how many are to vote.

Mr. ESTABROOK. It might make some difference whether this court is now going to forestall all the decisions which have been made. I think the question should be decided when we come to it; it is out of place for us to anticipate what the Senate is going to do when we come to this question. You might as well ask the Court what judgment would be pronounced, suppose we plead guilty. When the time arrives we will produce our authorities on this point,—when we come to a vote.

Senator HAWKE. I move that the Senate retire fifteen minutes for consultation.

Senator THOMAS. Before the motion is put, I would like to know just what the proposition is.

[The President explains.]

Manager HUDSON. I wish the matter reduced to writing before the Senate retires.

Mr. REDICK. I will make the statement in writing.

The PRESIDENT. All in favor of the motion to retire for consultation, will, as their names are called, answer "Aye;" contrary, "Nay."

Those voting in the affirmative

were Messrs. Brown, Cropsey, Gerard, Hawke, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant and Mr. President.

The PRESIDENT. Twelve members having voted in the affirmative, and none in the negative, the motion prevails, and the Senate will now retire for consultation.

The Senators returned to their chamber.

The PRESIDENT. The Senate, during recess, has decided to go on with the trial; counsel for the respondent and the Managers are so informed.

Mr. BRIGGS. Mr. President: On behalf of the respondent I desire to offer the following:

"In the matter of the trial of the articles of impeachment exhibited against David Butler, Governor.

"WHEREAS, The respondent has been informed, and has good reason to believe, that the Hon. David Brown, Senator from Otoe county, has been duly appointed by the President Postmaster at Nebraska City, and that the Senate of the United States has confirmed such appointment; and further, that within the past thirty days the said Brown has duly qualified by filing in the proper department his official bond and oath of office, and that he has accepted said position of United States Postmaster at said city; by reason whereof the respondent insists that said Brown is not a competent member of this Court, and cannot legally sit in the trial of this cause, because his seat has become vacated. Whereupon the respondent requests that the said Brown do not sit in this case.

JOHN I. REDICK,  
T. M. MARQUETTE,  
CLINTON BRIGGS.

Mr. ESTABROOK. Mr. President: I would like to ask the counsel for respondent if this is simply a request of Mr. Brown to state whether or not he is a Senator or Postmaster?

The PRESIDENT. The Secretary

will read the paper presented by Mr. Briggs.

Mr. MARQUETTE. Mr. President: In offering this exception to the eligibility of the honorable Senator from Otoe county, sitting as one of the Court of Impeachment, which is to pass upon the innocence or guilt of the respondent, we do so in the utmost good faith, and without any other desire than that of getting at the facts in the case. I have been told—by no other person than the Honorable John Taffe, Member of Congress from Nebraska—that Mr. Brown had not only been appointed Postmaster of Nebraska City, but that within, perhaps, ten days, Mr. Brown had forwarded his letter of acceptance of that position to Washington City, as also his official bond. Mr. Taffe informs me that that letter is now on file at Washington. Now, sir, if Mr. Brown is holding the office of Postmaster of Nebraska City, he is certainly not eligible as a Senator to try this case. Section 14, legislative articles of our Constitution, expressly declares that:

"No person being a member of Congress, or holding any military or civil office under the United States, shall be eligible to a seat in the Legislature; and if any person shall, after his election as a member of the Legislature, be elected to Congress, or be appointed to any office, civil or military, under the Government of the United States, his acceptance thereof shall vacate his seat."

Senator BROWN. I would say to the gentleman that when the proper time comes I will be prepared to make such a statement of facts to the Senate as it may desire. Being a party interested, it is to be presumed that I know something about it.

The PRESIDENT. The Senate is the proper body to decide upon the right of the Senator to a seat on this

floor; and that right must be determined only by evidence.

Mr. MARQUETTE. Undoubtedly, and we have no objection to hearing Mr. Brown make his statement.

Mr. WAKELEY. It certainly appears to me that this proposition is one that should not be argued by either the counsel for the respondent or the Managers. What constitutes the eligibility of a Senator is a matter solely to be passed upon by the Senate itself.

Mr. MARQUETTE. We do not propose to argue the question; but certainly we would be derelict in our duty in this case, did we not raise it at this time.

Senator BROWN. You say my bond has been forwarded to Washington. When was that done?

Mr. MARQUETTE. About five days ago I learned that the Senator had forwarded his bond and letter of acceptance.

Senator HILTON. Mr. President: I think this whole discussion is out of place. The Senate is the proper tribunal to discuss and pass upon the qualifications of its members.

Mr. REDICK. The idea seems to me that no man who holds a federal office can sit in this body. I do not believe Mr. Brown has given any thought at all to the fact of what he has done.

Senator KENNEDY. I move that the Senate, sitting as a Court of Impeachment, adjourn to half-past four.

Mr. REDICK. This is a trial to be determined soon one way or the other. We have not a full Senate here. I do not have the least earthly doubt myself, but what this case will go into the Court. I do not say it will or will not. We make our objections for the purpose of showing that we call this

Senate's notice to this vacancy among the members. We do not know but what Mr. Brown is our friend. We do not know whether he will vote for or against us. We want to have it in such shape that if this question should go to the Court, we know what we are doing when we get there.

Mr. ESTABROOK. I do not precisely know what the Senate will determine when it goes by itself, no argument has been addressed to the Senate, it is only a request to the individual members. The only thing they will do will be to determine that if the Honorable Mr. Brown should decide he would not vote, if they would excuse him, unless papers are filed here that his seat is contested. I see no hope that after the very solemn scenes enacted here at a former session—I was in hopes something would be done of a solemn character for the occasion. It seems that these extraordinary proceedings are never to cease, are to startle us at every hour and inch of our progress. It is asked here by a solemn proposition handed to the Clerk, that one member of this body should stultify himself, notwithstanding he was yesterday sitting in that seat (the President's chair) as an honorable member of this body, whose votes were cast for him, so that only one or two more would have constituted him President. He is now asked seriously to declare that he had no business there, that he was not a member of this Senate. Why is this? Let us see, I do not know what office has ever been offered to the Honorable Mr. Brown.

Senator HILTON. This discussion is entirely uncalled for, there is a motion before the Senate for a recess only.

Mr. ESTABROOK. I only ask a



few moments. What constitutes an officer? Various acts have been signed constituting an appointee or officer of the United States. In the first place the President makes the nomination, is he then an officer? It may be said he has accepted it when he visited the President at the Executive Mansion and was proffered an office, that may be deemed an acceptance in one sense of the word, but it is not an office yet, it goes to the Senate and then through the process which they call confirmation; yet sir he is not an officer. If he is unable to comply with the additional requirements of the law, the President will send the name of his successor to the Senate. He is required to prepare a bond proved and forward that, if they should say the bond has not been accepted in proper manner, or that the bondsmen are not of sufficient responsibility, is he still an officer? Not at all! The bond is returned, he exercises none of the functions; this is only one of the steps constituting him an officer, if peradventure some other man is nominated, he never has been in office. But if the bond be proved, then what? A commission is to be issued to which the signature of the President attached reaches him; he then has what you have when you have purchased a quarter section of land, you have the title to the land with the emoluments; when the officer gets his commission with the Great Seal of the United States upon it, with the President's signature, then he has a title to the office with the emoluments. I admit that he is then an officer, and not till then.

Mr. MARQUETTE. Will you indulge me in one word. I think the gentleman entirely misconceives our Constitution. It does not require a man to be appointed and take posses-

sion of an office until he is qualified: a person does not become a member of Congress, simply by being elected, he is only a member elect, it is only after he qualifies he becomes a member.

Senator GERRARD. I move to a point of order. This debate is entirely out of order while a motion to adjourn is before the Senate.

Senator HILTON. Mr. President: If there are no more advocates wishing to discuss the question, which properly belongs to the Senate of the State of Nebraska and not to the impeachment trial, I would urge that the motion be put.

The PRESIDENT. The counsel of both sides expressed a desire to speak a few moments on the question, and for that reason, I delayed putting the motion.

Senator HILTON. It is far from my intention to stop the counsel from discussing.

The PRESIDENT. The motion before the Senate is that we take a recess until half-past four. All favoring the motion say "aye," those of a contrary opinion will say "no."

A majority of the members voting in the affirmative the motion prevailed, and the Senate took a recess.

Upon the reassembling of the Senate.

Mr. REDICK said—Mr. President and Senators: We have agreed that if the Senate will adjourn until to-morrow, at two o'clock, we will offer no further testimony, and you can proceed to take a vote. But we want to wait until Mr. Lynch comes. We will rest our case right here, but simply want the chance of having the other Senator here, and that is certainly our right. If he does not come the vote can be proceeded with at two o'clock.

If he comes then we want the benefit of that man's vote, if it is for us. That is as little as you can ask of us. It is now five o'clock, and you want to consult each other, perhaps.

Mr. ESTABROOK. You propose then that—

Mr. REDICK. We stand by our bargain.

Mr. ESTABROOK. We do not have any bargain about this. We were ready this morning. This is on the hypothesis that no further testimony is to be introduced by you. But suppose we want to introduce new evidence?

Mr. REDICK. I understood you would have no more. Are you going to have any?

Mr. ESTABROOK. We may have some.

Mr. REDICK. Then we will give you until two o'clock to-morrow.

Mr. ESTABROOK. We do not ask you to grant us time.

Mr. REDICK. We would like you to say if you are going to introduce any testimony, because we may want to rebut.

Manager MYERS. We are now ready to open. We have two witnesses and ready to proceed with those two.

Mr. REDICK. We are not going to fight about that. If it is to be understood this thing is to be opened up, that is all we want to know. We will furnish our list of witnesses.

Mr. ESTABROOK. We ask no delay unless it is to issue attachments. You do not ask a further continuance to secure your witnesses.

Mr. WAKELEY. We desire to call George W. Ambrose.

GEO. W. AMBROSE CALLED AND SWORN.

By Mr. WAKELEY:

Question. Where do you reside, and what is your occupation?

Answer. I reside at Omaha, and my occupation is attorney at law.

Q. Were you not, in September last, Chairman of the Republican State Central Committee of Nebraska?

A. I was.

Q. State whether, as such, you had any communication with Governor Butler in respect to the five per cent. fund procured by him in Washington?

A. I had no communication in writing.

Q. Give to the Court a history of your conversations or communications with Governor Butler on that subject?

Mr. REDICK. I object, unless you fix the time when he had them, and all about it.

Mr. WAKELEY. In the month of September last?

The Witness. What do I understand? Is it the desire of the counsel that I give a statement in my own language, or simply answer questions?

Mr. WAKELEY. State your conversations and communications with Governor Butler on that question in that Month.

Mr. REDICK. Do I understand you state the conversations between Butler and yourself? That I object to.

The Witness. In September last, about the 10th I think, I addressed a letter to Governor Butler asking for a detailed statement.

Mr. REDICK. Have you got that letter?

The Witness. No.

Mr. REDICK. I object to that.

Mr. ESTABROOK. It seems to have been addressed to your client. Will you present it?

Mr. REDICK. If you ask it, we have it.

The President. The question merely requires the witness to detail conversation.

The Witness (holding a letter in his hand.) This is Mr. Brock's statement transmitted to me by Butler through

his private secretary, in answer to a request from him of a detailed statement of the school funds and the loans, for the purpose of publication.

STATE OF NEBRASKA,  
EXECUTIVE DEPARTMENT. }  
LINCOLN, Sept. 14, 1870 }

DEAR SIR:

In reply to your favor of this date I would say the State now holds for account of the School Fund.

U. S. Bonds 5-20's.....	\$50,000
U. S. Bonds Currency 6's.....	15,000
Bond and Mortgage.....	52,000
Neb. Ter. Bonds.....	30,000

\$137,000

And there is no State indebtedness, the full amount of bonds having been purchased by the State as an investment for the School Fund.

The bond and mortgages are secured by real estate worth at least treble the amount loaned.

I am very respectfully,

NELSON C. BROCK,  
Deputy Treasurer.

That statement was furnished me, and was before the State Central Committee and Governor Butler at their meeting on the 16th of September.

Mr. WAKELEY. For what purpose was that meeting called?

Mr. REDICK. I object to that as immaterial, and I ask you to put it in writing.

Mr. ESTABROOK. While my colleague is preparing the question I will say that it will be recollected by the Senate that the business of that meeting has been detailed here in all that has been deduced. Here is the chairman of the committee and we ask him to state precisely what occurred in that meeting, what it was for, and what transpired there.

Mr. WAKELEY submits the question. For what purpose was that meeting called?

Mr. REDICK. To that I object as being immaterial. Do we want to open the door to that long lingo of the operations of that Central Committee?

I think the Senate has had enough of that before, and I do not know what the answer may be. It may be for the purpose of consulting about the propriety of Governor Butler resigning. Then come other questions, and we do not know when we will quit. Let the Senate decide that no testimony go in unless pertinent to the issue. That question certainly is broad and general in its terms. I do not think the Senators want to know what that meeting was called for. The witness was chairman, and might have called that meeting for the purpose of getting into office some day, unless it was to make himself popular. I give the gentleman notice right here that if they open this ball and commence this fight, "war" shall be our motto, and we will rake this thing from beginning to end. I simply object to it because it will save time and probably a long litigation. You have him impeached, you think, and you think you have the tools here to convict him, and yet you are afraid to take a vote. I want this thing tried fairly as far as I can.

Mr. WAKELEY. Mr. President and Senators: I think I have heard that threat too often in courts of justice to be frightened by it now.

The PRESIDENT. The counsel for the Managers asks this question: "For what purpose was that meeting called?" The counsel for respondent objects because it is irrelevant. All in favor that the objection be sustained, will, as their names are called answer "aye," contrary "nay."

Those voting in the affirmative were Messrs. Cropsey, Gerrard, Hawke, Hilton, Tucker, Tennant.

Those voting in the negative were Messrs. Brown, Metz, Kennedy, Sheldon, Thomas and Mr. President.

Senator BROWN. Mr. President: I intended to vote aye.

The Clerk calls the name of Mr. Brown again, and he votes in the affirmative.

The PRESIDENT. Seven members having voted in the affirmative, and five in the negative, the objections are sustained.

Mr. WAKELEY. Was Gov. Butler at the meeting?

A. He was.

Q. State what conversation took place with respect to the five per cent. fund?

A. The question which was mooted before the committee was what was done with the five per cent. fund, supposed to have been brought home by Gov. Butler or Col. Taylor. Gov. Butler made a statement himself in relation to it: that the money had been brought home by Mr. Taylor, deposited in the First National Bank and drawn out by Nelson C. Brock on a power of attorney, and afterwards borrowed and used by him (Butler). He stated at the time he had amply secured that loan by mortgage, and that the mortgage was to have been drawn up by Mr. Sweet at the time the money was taken by him, but that owing to the fact that Mr. Sweet was not then in Lincoln, the mortgage was not then drawn; that afterwards it was drawn and recorded in the records of Pawnee county.

Q. Who was present at that conversation?

A. Mr. Sweet and Mr. Gillespie were present during a portion of the conversation, as well as a majority of the committee, which consisted of fourteen members.

Q. Was that all the conversation with regard to the five per cent. fund?

A. That is about the substance of the conversation at that time.

Q. Did you have any conversation with Gov. Butler subsequent to that time, in relation to the time when that mortgage was executed?

A. Yes, sir, I did.

Q. When, where, and what was that conversation?

A. The evening of the meeting of the Central Committee. I received an impression at that time that the mortgage was executed at the time

the money was received, and was, at that time on record in Pawnee county. On the 17th, which was the day after the meeting of the Central Committee, Gov. Butler told me frankly in relation to the mortgage—

Q. Was this told you privily, or in your public capacity as a member of the Committee?

A. This was publicly, as Chairman of the State Central Committee. He stated in this conversation what he had already stated before the Committee, and said that the mortgage was not drawn at the time the money was taken; that the mortgage was not executed until the day he received my dispatch to come to Omaha, which was sent on the 14th of September. The mortgage was executed that day by himself and wife, acknowledged by Mr. Brock, and deposited with the State Treasurer.

Q. At what particular place was this conversation?

A. At the Metropolitan Hotel.

Q. Was there any one present except the Governor and yourself?

A. No, sir.

Q. Did you have any subsequent conversation with the Governor as to why this five per cent. fund was not placed in the Treasury of the State?

A. I did.

Q. Where were you, and how came you to have the conversation?

A. The night the Central Committee adjourned. I requested another detailed statement to be furnished myself and the Committee. I requested Mr. Gillespie, who was then in Omaha, on his arrival at Lincoln, to get from the State Treasurer a copy of the mortgages, bonds, etc., in connection with these loans, and forward to me. That was on Friday evening, and on the Monday following, if I recollect right, a package of papers was received from Lincoln, with a letter from Mr. Gillespie, containing a copy of the mortgage executed by Gov. Butler and wife, and a copy of the bond, as well as copies of all the mortgages relating to the other loans—the "Tichenor House loan," the "Cadman loan," etc. This is the statement (witness exhibits statement). This statement not being satisfactory to me, I came to Lincoln on Tuesday and applied to Deputy Treasurer, Mr.

Brock, for another statement embracing the deposit of the five per cent. fund. This, which was transmitted to me, did not embrace the \$17,000, so called. The Deputy Treasurer told me he could not give me any statement embracing the five per cent. fund, as he could not tell what the amount was. I asked him if the State books did not show the amount. He said they did not. He said it would be impossible for him to determine from anything in their office, and said he only knew one way to see, which was from the voucher in the hands of Mr. Kountze, of the First National Bank of Omaha, and he gave me this letter to Mr. Kountze for the purpose of ascertaining the amount in the five per cent. fund:

"LINCOLN, NEB., Sept. 21, 1870.

"HON. A. KOUNTZE, Omaha, Neb.,

"DEAR SIR: Will you please ascertain from my voucher, the exact amount of the five per cent. of public monies, obtained by me of your bank, it being the draft payable to the Governor of Nebraska, deposited by E. B. Taylor, and drawn out by me on power of attorney from Gov. Butler, and give the same to G. W. Ambrose.

"I am, very truly yours,

"NELSON C. BROCK."

Afterwards, on the same evening, he furnished me the figures from a private memorandum book; there was nothing upon the page excepting these bare figures, stating that that was the amount of the loan. He said he was willing to certify that it was in the State Treasury, and gave me a statement to that effect.

Q. Why did you not use it?

A. Because I knew it was a falsehood. That letter was given to me on the 21st; then on the 28th of September or the 1st of October (if on the 28th it was in Lincoln, and if on the 1st in Fremont). I had a conversation with Gov. Butler, and told him I had attempted to get another statement showing the five per cent. money, and what the Treasurer had told me in relation to the matter. Gov. Butler told me this, after I had detailed to him all that had transpired, and said, "The fact about it is, George, it

never was there. It was insisted that there was no law in relation to its being loaned. The Deputy Treasurer brought it from Omaha, and I borrowed and used it."

Q. Did he state how he had used it?  
A. He did not, on that occasion, state how.

Q. At what place did this last conversation occur?

A. Either in Lincoln or Fremont. I saw Gov. Butler in Lincoln on the 28th of September, and either had the conversation with him at Lincoln, or in Fremont on the 1st or 2d of October.

Q. State the conversation as fully as you are able.

A. In this same conversation came up the question as to the mortgage. I told the Governor I had written, or rather had caused to be written, a letter to the Clerk of Pawnee county for an abstract of the lands in Pawnee. He said he had no doubt the Clerk would furnish the abstract. I never received it, and never received a letter from him.

Q. I will call your attention to one thing asked you, as to whether he said anything to you (in connection with the five per cent. fund) about "standing by him during the campaign."

Mr. REDICK. I object; if he was "standing by," as a friend; but he can answer it if he wants to.

WITNESS. All the statements Gov. Butler made to me was made as Chairman of the Central Committee. He never made any promises to me except he stated that if I would stand by him during the campaign, that after the election everything should be fixed up and the State saved to the satisfaction of everybody, and I relied on his statement.

Q. Where were you at the time the impeachment trial commenced?

A. I was in Omaha.

Q. Were you not in Washington subsequent to that time?

A. I was in Washington during the time of the investigation.

#### CROSS-EXAMINED.

Mr. REDICK. State the number of conversations you had with the Governor about this matter.

A. At the meeting of the Central Committee—

REDICK. That is one.

AMBROSE. The next time must have been on the 23th day of September following—

REDICK. That is two.

AMBROSE. And then I met him at Fremont. That was the second time after the committee meeting.

Q. Do you recollect what time you had that conversation?

A. It must be October 2d. Gov. Butler Spoke there on the evening of October 1st and on the 2d. I arrived there in the afternoon, we spent the evening together there, and during the afternoon we had this conversation.

Q. Where was it you had this conversation at Fremont?

A. I was in his room in the hotel.

Q. Were you together anywhere else but in his room that afternoon?

A. Yes, sir, we were walking on the street.

Q. Didn't you have this conversation in the barber shop?

A. No, sir. I was not with him in the barber shop.

Q. Can you fix the time of day when you had that conversation?

A. It was between 2 o'clock and supper time.

Q. How do you know that?

A. We were alone at the time. I went up to his room at his request.

Q. Will you swear you didn't take a drink that afternoon?

A. No, sir.

Q. Will you swear you didn't drink six times?

A. Yes, sir, I will.

Q. Five times?

A. Yes, sir.

Q. Four times?

A. Yes, sir.

Q. Three times?

A. Yes, sir.

Q. Twice?

A. No, sir; I might have taken a couple of social glasses with him.

Q. Are you sure you could remember what he said to you at that time?

A. Yes, sir.

Q. Is not it true that you was feeling pretty good at that time; that is, you was chairman of the campaign, and had two glasses of social material in you, and expected to be United States District Attorney?

A. I generally feel pretty good.

Q. At that time didn't he tell you that the first mortgage he gave was neglected to be put on record by Mr. Brock or Sweet?

A. No, sir.

Q. Didn't you so state in your testimony to-day?

A. No, sir; I stated that he told me it was understood that Mr. Sweet was to draw the mortgage, but Mr. Sweet not having come to Lincoln at the time it was neglected.

Q. Didn't he state to you that he had borrowed the money?

A. I think he did in the State Central Committee.

Q. Wasn't Mr. Sweet present?

A. He was present during a portion of Gov. Butler's statement, and I understood he assented to it.

Q. Didn't he tell you at that time the whole history of borrowing this money?

A. Yes, sir.

Q. Didn't he tell you this: That that money was brought from the First National Bank, in Omaha, by Mr. Brock, Deputy State Treasurer, and placed in the Treasury, and he borrowed it?

A. Yes, sir; he stated that to me after I told him of this conversation with Mr. Brock, and found out that I could not get the amount only from Mr. Brock's memorandum book.

Q. At the time he made that statement, was not it brought about by your own statement that Brock could not find it on the books and you could not get the truth from Brock, wasn't that the reason he told you this?

A. Yes, sir.

Q. What did Brock tell you about this money being in the Treasury.

A. He said he was willing to certify that it was not there, and that he had no account of it on the books.

Q. Did he ever tell you that it was not there?

A. Not in that language.

Q. He certified to you as Deputy State Treasurer, that the money had been deposited in the Treasury.

A. Yes, sir.

Q. Didn't you publish a mortgage of Gov. Butler's at that time?

A. Yes, sir.

Q. Have you a copy of the paper

with you in which that was published?

A. Yes, sir.

(The following was offered in evidence.)

**"COPY OF BOND MORTGAGE.**

"Know all men by these presents, that I, David Butler, of the town of Lincoln, in the county of Lancaster, and State of Nebraska, am held and firmly bound unto the State of Nebraska in the sum of thirty thousand (\$30,000) dollars, good and lawful money of the United States, to be paid into the State Treasury, for the benefit of the general school fund, for which payment well and truly made, I do hereby bind myself, my heirs, executors, administrators and assigns firmly by these presents. Sealed with my seal and dated this 25th day of May, A. D. 1869.

"The condition of the above obligation is such that if the above bounden, David Butler, his heirs, executors, administrators and assigns shall well and truly pay, or cause to be paid into the State Treasury, for the benefit of the general school fund, the just and full sum of fifteen thousand (\$15,000) dollars, on the 25th day of May, A. D. 1872, being the same sum of money which is secured by the above bounden, David Butler, and his wife, Lydia Butler, unto the said State of Nebraska, in and by a certain indenture of mortgage bearing date first above written, and shall also well and truly so pay or cause to be paid interest on said sum of money at the rate of ten per cent. per annum, semi-annually, into said State Treasury, on the 25th day of November and the 25th day of May in each year, then this obligation to be void, otherwise to be in full force.

(Signed.)      **DAVID BUTLER."**

"This indenture, made the twenty-fifth day of May, one thousand eight hundred and sixty-nine, between David Butler and Lydia Butler, of Lincoln, Nebraska, of the first part, and the State of Nebraska, of the second part, witnesseth, that the said parties of the first part, in consideration of the sum of fifteen thousand dollars, to them duly paid, have sold, and by these presents do grant and convey to the said party of the second part,

all these certain pieces or parcels of land situate in Pawnee county, Nebraska, and described as follows:

"All section seventeen (17), north-west quarter of section fourteen (14), north half of section twenty (20), north-west quarter of section twenty-one (21), south-east quarter of section twenty-two (22), south-west quarter of section twenty-three (23), all in township three (3), range eleven (11), east of the sixth principal meridian; the north-west quarter and the west half of the north-east quarter of section twenty-five (25), the south half of the south-west quarter of section twenty-four (24), containing in the aggregate two thousand and eighty acres, be the same more or less, with the appurtenances, and all the estate, title and interest of the said parties of the first part therein.

"This grant is intended as a mortgage to secure the payment of fifteen thousand dollars and interest thereon according to the condition of a certain bond executed by the said David Butler to the said party of the second part, which payments, if duly made, will render this conveyance void. And it is hereby further provided, that in case any installment or principal, or any part thereof, or any interest, moneys, or any part thereof, hereby secured to be paid, shall remain due and unpaid for the space of twenty days after the same shall, by the terms hereof, become due and payable, that then and in that case the whole principal sum hereby secured to be paid, together with the interest thereon, shall (at the option of the said party of the second part, the State Treasurer Governor or Land Commissioner) become due and payable forthwith, anything herein contained to the contrary notwithstanding, and if default shall be made in payment of the principal or interest above mentioned, then the said party of the second part are hereby authorized, pursuant to law, to sell the premises above granted, or so much thereof as will be necessary to satisfy the amount then due, and interest thereon, and costs and expenses allowed by law, rendering the overplus, if any there may be, to the said parties of the first part, their heirs or assigns.

"In witness whereof, the parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signed.) "DAVID BUTLER,  
"LYDIA BUTLER.

"Sealed and delivered in the presence of N. C. Brock.

(Stamp.)

"STATE OF NEBRASKA, } ss.  
County of Lancaster. }

"On this 25th day of May, in the year one thousand eight hundred and sixty-nine, before me, the subscriber, a notary public, duly appointed, commissioned and qualified for and residing in said county, personally appeared David Butler and Lydia Butler, to me known to be the same persons described in, and whose names are affixed to the foregoing instrument as grantors, and they acknowledged the same to be their voluntary act and deed.

"In testimony whereof, I have hereunto set my hand and notarial seal, at Lincoln, in said county, the day and year last above written.

(Signed.) "NELSON C. BROCK,  
(Seal.) "Notary Public."

"STATE OF NEBRASKA, } ss.  
County of Lancaster, }

"I hereby certify the foregoing bond and mortgage executed, to be true and correct copies of a bond and mortgage executed for the purpose therein set forth by David Butler and wife to the State of Nebraska.

(Seal.) "WALTER J. LAMB.  
"Notary Public.

"LINCOLN, Sept. 15, 1870."

Mr. REDICK. Didn't Mr. Butler say in the presence of Mr. Sweet, and before the Central Committee, when this mortgage was drawn?

A. No, sir; not before the Committee. I had no knowledge of it until the next day when Mr. Sweet was not present.

Q. Now these other mortgages you refer to, is these second nineteen mortgages?

A. No, sir; that is the only mortgage I referred to, which Gov. Butler told me was dated back.

Q. Did he state why it was dated back?

A. I understood the object of dating it back was to draw interest from the time he got the money.

Q. Didn't Gov. Butler say to you that the subject of his borrowing that money had been submitted to the Attorney General?

A. I don't think he said anything about the Attorney General.

Q. Did he ask your opinion about borrowing it?

A. No, sir.

Q. Didn't you draw on him about that time for a little whereas?

A. Gov. Butler paid me some money as Chairman of the Central Committee.

Q. Didn't he give you some for your legal counsel on these mortgages?

A. No, sir; he never submitted a legal proposition to me about that to my knowledge.

Q. Did not Mr. Butler submit this question: whether the State could collect these monies?

A. He never submitted a legal proposition to me on that point to my knowledge.

Q. You had no conversation with him about it?

A. I never recollect consulting with him about that whatever. My idea was to try to elect him.

Q. Did you not try to elect him when you called that meeting?

A. He wouldn't have been elected if I had not called that meeting.

Q. Do you know what the \$52,000 bonds and mortgages in that statement refers to?

A. I know nothing about it except as was stated in a subsequent communication. The Deputy Treasurer refers to it in another statement.

Q. Does he refer to these bonds and mortgages to Mr. Butler?

A. He says: "In making my statement to Gov. Butler, I reported a mortgage of Butler's for \$16,000 and did not include one warrant for \$6,000."

Q. Then I understand you offer this statement in evidence?

A. I do not offer any in evidence.

Q. In speaking of bonds and mortgages, the statement was made including \$16,000 bonds and mortgages



by Butler to the State. Do you understand it so?

A. I was led to infer that from these statements.

Q. Then do I understand you to say that in the statement dated September 17th, 1870, made to Gov. Butler by Brock, that \$52,000 marked in the statement bonds and mortgages, includes \$16,000 bonds and mortgages of Butler owing to the State?

A. I was led to infer that from a subsequent statement.

#### RE-EXAMINED.

Mr. WAKELEY. Do you know how many drinks he had?

Mr. REDICK. I object to the question; it is not proper cross-examination.

Mr. WAKELEY. How do you wish to be understood in reference to the conversation about mortgages; whether it was or was not at the same time when the Governor stated to you that the five per cent. fund matter was placed in the Treasury? Was there any conversation in reference to the mortgage? From the cross examination, some questions were asked you about mortgages?

A. He simply stated that he had used it and given a good mortgage covering a large amount of land for security. That was in the same conversation.

Q. State whether the mortgage which Gov. Butler told you was executed after receiving your telegram, was or was not the mortgage of which a copy was published in the Republican.

A. Yes, sir; the same.

Q. Did he state to you how long after he received the telegram he had the mortgage executed?

A. He stated that he executed it that day?

Q. Are you confident as to the day of your telegram to him?

A. The Committee met on Friday, which was the 6th, there was one day intervened between the meeting of the Committee and the sending of the telegram.

Q. On what day was the copy published?

A. On the 25th. I received a copy when I was east.

Q. In any conversation of which you have spoken in relation to the mortgage, was there any other mortgage referred to than this one published?

A. I have not heard of any other.

Q. You stated in your cross-examination that you did not think the Governor would have been elected but for that meeting. What was the basis of that opinion?

Mr. REDICK. I object. It was a voluntary statement of his own; he made a stump speech after answering a question.

Mr. WAKELEY. You insist upon your objection?

Mr. REDICK. I do: certainly.

Senator THOMAS. When Gov. Butler told you that the mortgage to secure the five per cent. fund was executed by him on or about the 14th day of September, 1870, did he claim that he had executed any mortgage previously to that time to secure that fund to the State?

A. There was no mortgage executed until that time.

Senator HILTON. I move that we adjourn until to-morrow morning at 10 o'clock.

The PRESIDENT. The motion before the Senate is, that we adjourn until to-morrow morning at 10 o'clock. All in favor of the motion will signify the same by saying "Yea"; contrary, "Nay." The motion prevails and the Senate stands adjourned until 10 o'clock to-morrow morning.

THURSDAY, June 1, 1871.

The Senate, sitting as a Court of Impeachment, met at 10:30 o'clock.

The Sergeant-at-Arms made the usual proclamation.

The Secretary called the roll. All members present.

Mr. John Gray was sworn as official reporter, vice J. W. Howard, resigned.

The Journal of the previous day was read and approved.

R. D. SILVER sworn by the prosecution.

Mr. WAKELEY. State your name and place of residence.

A. R. D. Silver; my residence is Lincoln, Nebraska.

Q. What's your occupation?

A. A builder.

Q. You were one of the contractors on the State University in this place?

A. I was.

Q. At what time was the contract entered into?

A. The contract for the basement was entered into in June, 1869.

Q. At what time was the contract for the superstructure entered into?

A. I think in August following.

Q. Who was your co-contractor?

A. My father, D. J. Silver.

Q. By whom were the negotiations conducted on the part of yourself and father?

A. By me.

Q. At what place?

A. At Lincoln.

Q. About what time?

A. It was in June the first contract was let.

Q. Did you negotiate with Gov. Butler?

A. Yes, sir.

Q. What was the amount of these several contracts?

A. Altogether, \$152,000.

Q. How much was the basement contract?

A. \$23,520.

Q. State whether or not, in your negotiations with Gov. Butler, any agreement or understanding was had, that he should have any profit, or advantage, from the letting of the contract?

A. There was.

Mr. REDICK. Was that in writing?

A. It was.

Mr. REDICK. Then I object.

Mr. WAKELEY. Where is it?

A. I think it is at my house.

Mr. WAKELEY. State about what time the University was completed?

A. About the 29th of November, 1870.

Q. At that time what amount had the contractors received towards the contract?

Mr. REDICK. I object; I don't see

any point in his saying how much they had received.

Mr. WAKELEY. Mr. President: It is simply preliminary to a question I am about to ask. I wish to show how much was due on the contract. [To witness]:

Q. About how much was due the contractors upon the completion of the building?

A. \$14,500.

Q. Had the contractors any claims for extras outside of that?

A. They had; \$7,300.

Q. State now whether, about the time, or after the time of the completion of the building, you had any conversations with Gov. Butler in respect to auditing these claims, and authorizing the issuing of the warrants for paying them, or allowing your estimates?

A. I did.

Q. State to the Court, fully, all that took place in respect to that subject?

A. On the 29th of November the architect came here and made up my final estimate and gave it to me. We called together at the State House and saw the Governor, Secretary and Auditor, the Commissioners, but my settlement was postponed until the next day. I came here the next day but did not see the Board until after dinner. I met the Governor and he took me to his private room, and there this conversation took place. He wanted to know if I was not going to do something, and I said what? and he said I ought to give him about \$10,000, as he was very hard up, and his expenses in this matter had used up his salary; and before I left the room he asked me to go to the Auditor and have a \$10,000 warrant issued for him. I went down to the Auditor and told him about it, and asked him what I had better do, and he said I could do as I pleased. I went back and told the Governor I would do it, but that I had only a \$1,000 warrant made out now. After that I went back and told the Auditor not to issue the warrants until after supper. There was a bond lost or missing, and I wanted to find that and have it canceled, which was afterwards found; and after supper I went down and got

my warrants and went down town. A few days afterwards, Gov. Butler called me to his room and asked me what I had done with my warrants, and I told him I had got them where he would not get any of them. He asked me what I had said I would have a warrant issued for, if I didn't intend to do it. I said I did so to get my own warrants. There was some harsh language, and the Governor rose to his feet and said he would not stand this matter, but I told him I didn't frighten.

Q. State what the demeanor or action of the Governor was when he used this language?

A. He acted as if he was angry; he rose to his feet and struck the table with his hand.

Q. About how long did this conversation last?

A. I presume about thirty minutes.

Q. State what conversation took place between you and Gov. Butler in regard to his having an interest in this contract?

Mr. REDICK. Is not that conversation in writing?

A. Yes, sir.

Mr. REDICK. Then I object to his stating, as the writing is the best evidence.

Mr. WAKELEY. We are not asking for the contract, but for the conversation which preceded it.

Mr. ESTABROOK. Judge Wakeley rightly says that this is not a question as to the contents of a corrupt contract, but it is a question as to his corrupt action and conversation which led to the making of this contract, and we insist it is proper evidence.

Mr. REDICK. Mr. Estabrook, at the suggestion of Gov. Butler, I will waive my objection.

Mr. WAKELEY. State what conversation took place between you and Gov. Butler, previous to the letting of the contract for the State University, in respect to his having an interest in the contract?

A. It took place at the east door of the capitol. He said he wanted to anake some money out of the thing;

and said, before I got my contract closed I must meet him in Chicago. I met him there, and then the contract was completed.

Q. Repeat what was said about your meeting him in Chicago?

A. I was to meet him there and pay this money before the contract was signed.

Q. How much was you to pay him?

A. I was to pay him down \$5,000.

Q. Was this before or after the contract was let?

A. It was after the contract was let, but it was not closed and signed until a short time after I came back from Chicago.

Q. Did you have any other conversation in Lincoln of that character on that subject?

A. I think not.

Q. State whether or not you afterwards met him in Chicago?

A. I did.

Q. What time and where did you meet him in Chicago?

A. It was in the month of June. I met him at the Sherman House in his room. Father was with me.

Q. State to the Court what took place at that time?

A. Well, my father objected to the contract; he said it was dangerous business, but Gov. Butler insisted, and we finally entered into the contract and the agreement was signed.

Q. State fully all that was said about the money or about the note?

A. Well, as I said before, my father objected—

(Witness interrupted.)

Q. About what time of day was this interview?

A. I think it was after dinner.

Q. As there is another Senator come in, will you be kind enough to commence at the beginning of that interview, and state as fully as you can all that was said and done by the parties?

A. I think it was after dinner we talked over this matter. My father objected to it; he did not think it was right. I had not much to say in the matter. At that time I consented to do it. We made a note running four months for \$5,000. The money was paid to Gov. Butler; I counted it myself.

Q. What was embodied in this agreement in regard to the note?

A. The note was to be canceled. That is about all that took place.

Q. What was the substance, or the language itself, of Gov. Butler, in speaking of this money, as to what it was for?

Senator BROWN. I move that we take a recess for fifteen minutes.

The PRESIDENT. It has been moved and seconded that this Court take a recess for fifteen minutes. All favoring the motion signify the same by saying "Aye"; contrary, "Nay." The motion prevails and the Court take a recess for fifteen minutes.

After the recess the Senate was called to order.

Senator KENNEDY moved that the Senate, as a Court of Impeachment, take a recess until half-past one.

Motion withdrawn.

The PRESIDENT. Proceed with the case.

Mr. WAKELEY. Mr. President: During the recess we requested the witness to go to his home for the written agreement of which he spoke, and ask a few minutes indulgence until he returns.

On the return of the witness the examination was continued.

Mr. WAKELEY. (To the witness.) Have you now with you the contract of which you spoke?

The WITNESS. I have.

The contract was produced.

Mr. WAKELEY. Have you the note, and will you produce that?

The note is produced.

Mr. WAKELEY. Mr. President: We offer the contract and note in evidence.

Mr. REDICK. After reading them, we don't object to either.

Mr. ESTABROOK. Read the note to the Senate.

The following is a copy of the note: \$5,000. CHICAGO, June 21, 1869.

Four months after date I promise to pay to the order of Messrs. D. J. Silver & Son, payable at the Union National Bank, Chicago, Five Thousand Dollars, value received, without any relief whatever from valuation or appraisal laws, with interest at the rate of 10 per cent. per annum.

DAVID BUTLER.

Mr. ESTABROOK. I will now read the contract:

"Articles of agreement made and entered into this 21st day of June, A. D. 1869, between D. J. Silver and Robert D. Silver, of the firm of D. J. Silver & Son, of the city of Logansport, county of Cass, and State of Indiana, of the first part, and David Butler, Governor of the State of Nebraska, of the town of Lincoln, county of Lancaster, and State as aforesaid, of the second part, witnesseth:

That the party of the first part did, on this, the 21st day of June, A. D. 1869, loan to the party of the second part five thousand dollars, lawful money of the United States, for which the party of the second part gave to the party of the first part his note of like amount and bearing even date herewith, payable four months after date, viz: Should the contract for building the State University and Agricultural College Building, located at Lincoln, Nebraska, according to plans and specifications furnished by M. J. McBird, architect, of Logansport, Indiana, be awarded to the party of the first part, at the estimated cost, viz: one hundred and fifty thousand dollars, then, and in that case, and in consideration of said award, the party of the first part is to surrender to the party of the second part the aforementioned note; and the party of the first part further agrees to pay to the party of the second part five thousand dollars additional, in consideration of the contract being awarded as aforementioned, this payment to be made as the work progresses. Should necessity compel the awarding of the said contract at less prices, not going below one hundred and twenty-five thousand dollars, the aforementioned note is to be surrendered and the five thousand dollars is to be paid proportionately, thus: for each five thousand dollars added to the contract price over one

hundred and twenty-five thousand dollars, the party of the first part will pay to the party of the second part one thousand dollars; otherwise, and the aforementioned note is to remain in full force and virtue in law, bearing interest at the rate of ten per cent. per annum.

In witness whereof, we, the parties, have hereunto set our hands and seals this 21st day of June, A. D. 1869.

D. J. SILVER & SON, [Seal.]  
DAVID BUTLER." [Seal.]

[Int. Rev. 15c.]

Mr. WAKELEY. When and where was that contract signed?

The WITNESS. On the 21st day of June, at the Sherman House, in Chicago.

Q. Is that the contract to which you referred in your testimony when you said the agreement with the Governor was to have an interest in the contract was in writing?

A. Yes, sir.

Q. Where was your father during your negotiations with Gov. Butler in Lincoln?

A. In Logansport, Indiana.

Mr. ESTABROOK. The Secretary will please place this note and contract on the file.

Mr. WAKELEY. Has that note ever been paid?

The WITNESS. It has not.

Q. Have you no personal knowledge if anything has taken place in regard to the release of that note?

A. No.

#### CROSS-EXAMINED.

Mr. REDICK. Mr. Silver, did not you testify once before, touching this transaction, before the Investigating Committee?

The WITNESS. I testified before two Investigating Committees.

Q. Well, when was the first time you testified in regard to this?

A. In the winter of 1869.

Q. Did not you swear at that time you knew nothing about this?

A. I think not.

Q. Do you recollect what you stated in regard to this transaction?

A. I was asked the question if I paid any money on this contract before the Investigation Committee. The

Governor agreed with me he would pay this note; and, to help him out, I testified I did not give him any money.

Q. Well, did not you state to Gov. Butler, to induce him to make this negotiation, that you had paid Gov. Morton, of Indiana, \$40,000?

A. I never made such statement.

Q. Did you never say to Gov. Butler, at any time, you had paid Gov. Morton \$40,000—you or your father?

A. I never spoke to Gov. Morton but once in my life.

Q. State whether or not you stated to Mr. Thomas Holloway, in the city of Lincoln, soon after that statement took place, that in answer to a question put to you by him whether you were blackmailed, in regard to the statement of your contract, you did not tell him you were not blackmailed and they never asked a cent from you?

A. I do not remember it.

Q. If he should swear you said so, would you believe it to be true?

A. I do not think I ever said it.

Q. If you had said so, it would be true, wouldn't it?

A. I do not understand what you are trying to get at.

Q. I don't care, you should know it. If it should turn out you did say so, you would know if it were true?

A. I ought to know. I would not state an untruth.

Q. Did you not tell John Cadman, of this city, at the time you gave your testimony before the Investigating Committee to tell Gov. Butler, if he testified in the case, to swear that the money was loaned, because the Committee would not allow you to explain?

A. I did not.

Q. Now, then, when this first conversation took place between you and Gov. Butler, in November, 1870, who else was present besides the Governor?

A. Nobody but ourselves.

Q. Then all the conversation between you and the Governor was between you and Gov. Butler alone?

A. Yes, sir.

Q. All the conversation that you have detailed about his saying he wanted you to do something for him was made because you did not?

A. Yes, sir.

Q. Did not you swear, at your second examination before the Investigating Committee, that this proposition was made in the presence of Mr. Kennard?

A. No, sir.

Q. Did not the Governor say something about your giving Kennard a loan of \$2,000?

A. He wanted me to have a \$10,000 warrant drawn for himself, and thought I ought to do something for Secretary Kennard.

Q. Why did you not state that this morning?

A. Because I was not asked to.

Q. So, then, you state that he said he thought you ought to do something for Kennard?

A. Yes, sir.

Q. Now, don't you recollect this, that Butler, when he spoke to you about this \$10,000, or at least when that conversation arose, did you not say that you would give your \$35,000 claim for \$25,000 in money?

A. I don't remember it.

Q. Did you not, at that time, state to Gov. Butler that you wanted your bonds cashed, and discussed with him the matter of having them cashed; what was said about that?

A. I don't think there was anything said at that time about discounting my bonds.

Q. When was this conversation?

A. It was during the Senatorial contest in January last.

Q. How did the talk come up; did he come to you or you go to him about it?

A. He sent for me to come to the Tichenor House. I went up and he told me Mr. Kountze was here and he could get me my bonds discounted, and wanted to know how much I would take. I told him I had made other arrangements and did not want my notes discounted.

Q. Did not you have some hard words with the Governor at that time, and did he not say you had agreed to let him have your bonds at a discount?

A. I think we had a few hard words, but it was in talking about a letter my father had written about him; he thought my father had treated him wrong?

Q. Did not he tell you had promised to discount these bonds at \$10,000

if he would get you the money?

A. No, sir.

Q. Have you not offered members of this Legislature \$10,000 if they would get your bonds cashed?

A. I have not. I told one member of this Legislature that I would give him \$1,000. I told him I wanted a committee to examine the building and I would make him a present of that sum.

Q. Have not you made the same and better offers to certain other gentlemen?

A. I don't remember but the one. I have talked with several about it, but don't remember of promising but the one.

Q. Did not you tell Gov. Butler at one time that your father could run this Legislature; that he had done it in Indiana and could do it here?

A. I don't remember ever making any such statements.

Q. Now, did not you know, at the time you entered into this contract with the Governor, that he could not let the contract, but that it had to be let by the Commissioners?

A. Yes, sir. I know that three of the Commissioners had to let the contract. It was upon the contingency that I got the contract that I lent this money to the Governor. He told me he could manage and get it for me.

Q. Before you went to Chicago you talked with Gillespie, did you not?

A. No, sir. I did not talk with him anything about making this contract. I don't remember the first time I did talk with Mr. Gillespie about it. I told him the time it was made. I am sure he did not advise me to pay the Governor the \$10,000 he asked. I think Mr. Gillespie told me to use my own judgment.

Q. Did you not swear, at your last examination before the Investigating Committee that he advised you to pay it?

A. I don't remember.

Q. How long did you talk about it?

A. May be thirty minutes. I think his language was "use your own judgment."

Q. You built Gillespie's house?

A. Yes, sir.

Q. Who paid you?

A. Gillespie. He gave me a house

and lot in Omaha. That was \$5,000. I first loaned him the money and took a mortgage on his house; when the note came due he could not pay me and deeded me the property. Mr. Gillespie's team worked for me during the summer and that was credited on the building of the house. He gave me his note for \$270 and he owes me about \$2,000.

Q. Have you not stated that you would ruin Gov. Butler if it was in your power, or words to that effect?

A. I have not.

Q. State whether you did not tell Secretary Kennard, in Lincoln here, last fall or winter, that you would do everything in your power to ruin Gov. Butler, or words to that effect?

A. I talked with him about the bad feeling between me and Gov. Butler. I told him he had treated me mean, and that I had to quit work on account of it.

Q. You still hold that animosity against him?

A. No, sir. I would forgive him. I would gladly not be a witness on this stand.

Q. Did you tell the Governor that you would come on to the witness stand and do what you could for him?

A. No, sir.

Q. Did he tell you that you had better come on the stand and tell the whole truth?

A. No, sir.

Q. What did Gov. Butler say to you just before you left, before the impeachment trial came on, about testifying?

A. The Governor asked me if I was going away, and I told him yes, I was going away with my family, and he asked me to give him my address so that he could telegraph to me.

Q. Didn't he state that you had better try and get back in time for the trial?

A. No, sir.

Senator KENNEDY. I move that the Senate, sitting as a Court of Impeachment, take a recess until 2 o'clock P. M.

The PRESIDENT. All those in favor of the motion will say "Aye";

opposed, "No." The motion is carried, and the Senate takes a recess until 2 o'clock.

#### AFTER RECESS.

Senate called to order by the President.

Roll called.

The Sergeant-at-Arms made the usual proclamation.

The Managers and their counsel and the Respondent and his counsel all present.

#### CROSS-EXAMINATION OF SILVER RESUMED.

Mr. REDICK. Is there any other paper existing between you and your father and Gov. Butler growing out of this transaction?

The WITNESS. There is a copy of the contract.

Q. No other except that copy?

A. None that I know of now. I have heard my father mention the receipts he gave Gov. Butler; never saw them myself.

Q. You know nothing about it, only what he told you?

A. No, sir.

Q. Did you not state to Mr. Thomas Mulloy, in this city, that your transactions with Butler were all straight and regular, or words to that effect, and that you never had paid him a cent?

A. No, sir.

Q. Did you say anything to him about it?

A. I do not recollect.

Q. Did you ever make such a statement to Mr. Skinner, of this city?

A. Not that I remember of.

Q. Have you not discussed with the Auditor of State and the present Acting Governor touching the question of Mr. Butler's removal, with reference to having your claim cashed or provided for by the Legislature; how about that?

A. I do not know that I have said anything to them about it?

Q. What was said?

A. I do not remember of any such conversation. I have been in the office and talked about the impeachment trial.

Q. Did you ever talk about the prospect of getting your claim to the Auditor, Acting Governor, or any employee, or the probability of you getting your claim in the case of the removal of Gov. Butler?

A. No, sir.

Q. In any shape, manner or form?

A. I do not think I have.

Q. No conversation with any of them on that subject; do you swear to that?

A. I do not remember of anything.

Q. Will you swear you did not have such a conversation with both the Auditor and the Secretary of State?

A. I cannot remember, to the best of my knowledge. I do not think I have had such a conversation.

Q. I want to know if your memory is ordinarily good, or if it is a defective memory. I ask you to swear if you did or did not; you cannot recollect. Will you swear you did not have such a conversation with either of those gentlemen to the best of your recollection?

A. No, sir.

Q. Well, if you had had such a conversation with these gentlemen, you would be likely to remember it?

A. Yes, sir.

Q. If you had stated to Mr. Mulloy the question I asked you, you would be likely to remember that?

A. Yes, sir.

Q. If you made a statement, would you recollect it?

A. Yes, sir.

Q. Who wrote that contract?

A. I did.

Q. Who was by when it was written, your father?

A. No; my father was not in the room; Gov. Butler was.

Q. Did you originate the contract?

A. Yes, sir; I wrote it myself.

Q. Did you or your father ever pay Gov. Butler for these contracts to build these buildings?

A. We paid him \$5,000 on that note.

Q. Did you pay him anything after that?

A. No, sir; I loaned Gov. Butler \$500 after that.

Q. You paid him nothing?

A. No, sir.

Q. At the time when the bid was

let to you how many opposition bidders were there?

A. I met Mr. Ward here.

Q. Do you know how many opposition bidders were here?

A. I know who I met here.

Q. How many?

A. On the first there were Mr. Ward and myself and Mr. Richmond of Omaha.

Q. Were there three or four?

A. Mr. Ward and myself on the first and three on the other.

Q. State whether or not your's and your father's were not the lowest bids on the basement?

A. Yes, sir, our's was the lowest proposition?

Q. How much below the others?

A. I do not recollect.

Q. How were you on the other bids; were you the lowest?

A. Yes, sir.

Q. Where were these bids opened, were you by when they were opened?

A. No.

Q. You do not know who opened them?

A. I do not.

Q. At the time you put in your bid, after seeing the plans and specifications of these structures, was not your bid a fair one, a fair compensation for building?

A. I did not consider that we had such a terrible extravagant price.

Q. Did not you consider your bid about a fair price?

A. I did.

Q. Was it not as low as you could afford to take the contract at that time!

A. No; we might have taken it some lower.

Q. Was not it as low as you could have taken it at that time, and taking the risk.

A. I might have taken it lower.

Q. You might have lost money?

A. Yes.

Q. Since you have completed the job, will you swear you could have taken it lower and made money.

A. No.

Q. Then it was a fair price for these contracts?

A. Yes, sir.

Q. Now, you made a contract with David Butler to pay \$5,000 if you got the bid, why did you slip out of your



contract? Are you in the habit of going back on what you say and what you write?

A. No, sir.

Q. Was not that contract and memorandum that you made in Chicago abrogated and disregarded, both by Butler and yourself, long before the settlement was made, and so considered by both of you?

A. It was not lived up to.

Q. Was it not in the minds of both of you abrogated and disregarded long before the settlement, by both acts and words and either?

A. I could not say how the Governor looked at it.

Q. How did you look at it?

A. I looked at it as though it existed.

Q. When did you quit looking at it in that shape?

A. I have not quit looking at it in that shape yet.

Q. You swear that no time from the time the contract was given, up to the time the settlement was made, that any act had been done by you or your father that would lead towards an abandonment or abrogation of that contract. Do you so say?

A. There was nothing done to abrogate on my part. I do not know what my father did.

Q. Did not the old gentleman have as much to do with it as you?

A. He was in the house when it was made.

Q. If it should turn out that the old gentleman had by an act abrogated that contract, and disposed of it, how would that affect it?

A. He was an equal partner. I suppose he had a right to do that.

Q. So if he had done any act to dispose of it that would bind you?

A. I suppose it would.

Q. Did you and Gov. Butler, at any time after the giving of that contract, look at it or refer to it?

A. We did.

Q. When?

A. The first time was at the time we had the muss about the \$10,000. The Governor had a copy.

Q. When next?

A. I did not talk with the Governor after this time.

Q. Do you recollect the date?

A. On the 29th of November, 1870.

Senator THOMAS. I would like to ask Mr. Silver what he said; whether this contract was executed in duplicate, and who took it.

The WITNESS. I think it was a duplicate. Gov. Butler took it.

Mr. REDICK. Did you copy the original?

A. Yes.

Q. You read them both?

A. Yes.

Q. Do not you recollect that Gov. Butler, at the time the \$5,000 was loaned to him on four months, told you he could refund that money about that time, but he needed it for the purpose of paying up on certain lands bought from the State of Nebraska?

A. I do not remember.

Q. It was about buying a certain 120 acre tract; you knew of it, and he wanted the money to pay for the land?

A. He wanted his money to pay for the land, but I do not think there was anything said about paying it in the four months.

Q. Did not you know you advised Gov. Butler to buy it when you were here saying you would loan the money if he wanted it?

A. I do not recollect that.

Q. Neither in Chicago or here?

A. No.

Q. You say again that when you went down to get the warrants, you told the Auditor not to draw them that afternoon, but in the evening, and the warrants were drawn to your order?

A. Yes.

Q. Did you direct him to draw them in that way?

A. They were always drawn in that way, in \$1,000 warrants each.

Q. I thought you were to draw a \$10,000 warrant for the Governor, and you promised to do it?

A. Yes.

Q. And you told the Auditor to draw them in \$1,000 warrants?

A. Yes.

Q. Why did not you stay there and get them if you wanted to cheat, or why did you delay till evening?

A. I did not want any muss about it, and thought we would be alone and the Governor not be by.

Q. So that you could gobble the \$10,000.

A. Yes, sir, and put it in my pocket.

Q. And you told the Governor he could not have any, and that you had it in your pocket?

A. Yes.

Q. Did you tell the Auditor you were going to gobble the \$10,000?

A. Yes.

Q. What did he say?

A. I think he said he thought it was all right.

Q. Did you think so, or did he say it?

A. I think he said so. I would not be positive.

Q. You had a \$1,000 warrant issued ahead of the others?

A. They were all \$1,000, issued at the same time.

Q. Did not you state to Gov. Butler, in the presence of Mr. Patrick, you would have them all issued in \$1,000 warrants to use when the Legislature met?

A. I never made such a statement.

Q. Nor words to that effect?

A. Or words to that effect. I might have said I had them issued, but nothing about the Legislature.

Q. Was not the objection that Gov. Butler made to the issuing of these warrants,—and did not you so swear,—that to issue so large a body of warrants at one time would injure him politically?

A. That had nothing to do with these warrants, but the one issued on the first of August, on a former estimate.

Q. That is another dose?

A. Yes.

Q. Did you pay him anything for the issuing of those?

A. No; I had to pull the men off the work to get it.

Q. Did not Governor Butler tell you at the time the contract with the State was let, that they had to raise the money out of the sale of these public lands, and they might be short, and if so, you must wait a little while?

A. Yes; he said they had to raise the money out of the lots and lands?

Q. Did not you reply that your men were able to carry it?

A. Yes.

Q. And you did carry it?

A. I am satisfied of that fact.

[The counsel for the respondent asked for the note offered in evidence by the prosecution.]

R. D. SILVER CROSS-EXAMINED.

Q. Who wrote that note?

A. It is my hand writing.

Q. Where did you get the blank on which it is written?

A. I think my father had a blank note book.

Q. Then if your father had a blank note book, no doubt he had that blank note book with him in Chicago, where the note was made.

A. Yes, sir; I think I recollect he took it with him.

Q. Now, I want to ask you whether you did not take to David Butler, say in June or July, or August, 1870, about a year after the date of that note, a blank note similar to that, with his name torn off, covering the same amount, and told him it was the same note?

A. Yes, sir; but I did not tell him. He asked me for the note and I took this to him, with his name torn off.

Q. Why did you do this infamous fraud?

A. I did not tell him this was the note.

Q. Don't you recollect that when you gave him that note with the name torn off, that it had a little bit of a "D" on it?

A. I don't recollect.

Q. Will you swear that when you performed that little freak of nature, you did not leave a little bit of a "D" on to mislead him?

A. It may be I did.

Q. Did you not state to Gov. Butler, before you presented this note with the name torn off, that your father had the note and you would send it to him?

A. He asked me for the note, and I think I did.

Q. Will you fix the month, as near as you can, when you delivered that note to Mr. Butler?

A. I could not tell; I know I was occupying Mr. McConnell's office at the time.

RE-EXAMINATION.

MR. WAKELEY. Mr. Silver, when was it the Governor asked you to surrender up the note.

- A. I don't know the exact date.
- Q. About when?
- A. I think it was about a year after it was made. I think he made the demand just as—
- Q. Had he paid the note?
- A. He had not.
- Q. On what account then, did he make the demand?
- A. That I had got that contract.
- Q. Did he assign any other reason?
- A. He did not.
- Q. Was this before the university was completed?
- A. Yes sir.
- Q. About how long?
- A. I presume six or eight months.
- Q. What land was it for which the Governor wanted the money in Chicago?
- A. I think it was the tract of land on which his residence is.
- Q. This blank which was surrendered: was there ever any genuine name on that?
- A. I think not.
- Q. You were asked in reference to your testimony before the investigating committee, in answer to that, you said Gov. Butler had agreed with you that he would pay the note. State again the particulars of that agreement?
- A. During the investigation, I came up to the State House, and the Governor told me he would pay the note I held against him, and told me that I could state before the Investigating Committee that I never paid anything for the contract.
- Q. Who commenced the conversation?
- A. He commenced himself, and told me he would pay the note.
- Q. Was there anything said in regard to your being witness before the Investigating Committee?
- A. I don't know that there was.
- Q. I understand then he said to you he would pay the note, and you could then testify that he received no money from you?
- A. Yes: that I paid no money for the contract.
- Q. Which Investigating Committee were you referring to?
- A. The first one; in the winter of '69.
- Q. Had you then been subpoenaed

as a witness before the Investigating Committee?

- A. I don't remember.
- Q. Had you been requested to be there?
- A. I don't think I had; I expected I would be.
- Q. Where was this conversation.
- A. At the Governor's private office.
- Q. Were you sent for, or not.
- A. I don't recollect; he called me into his private office, I know, and he commenced the conversation.
- Q. You were asked if you did not state, at some time, that Kennard was present when Gov. Butler and you talked about the \$10,000, what did you say, if anything, about Kennard being present, and where was he present?
- A. I don't remember of Kennard being present at all.
- Q. Was he present at the time you met the Commissioners—the time you talked about allowing your estimate.
- A. Yes, sir.
- Q. To what place did you go when you had the private interview with the Governor in his office?
- A. I went into the Auditor's office.
- Q. Did you leave Kennard at the Auditor's office?
- A. I don't remember whether I did or not.
- Q. When was it that the Governor said he must have \$3,000 for Kennard.
- A. At the first conversation, at his private office.
- Q. Was this in addition to the \$10,000?
- A. Yes, sir.
- Q. You stated, on cross examination, that the Governor referred to this contract when you had this fuss in his office. State particularly what he said about it?
- A. He claimed that I owed him ten thousand dollars according to the terms of that contract.
- Q. How did he figure up ten thousand dollars on that contract?
- A. Well, I argued it one way and he argued it the other, that is, I said it was five thousand dollars and he said it was ten thousand.
- Q. Was the contract or a copy of it present?
- A. He had his copy there.
- Q. Will you state where you were and why you were not here at the

time this impeachment trial commenced?

A. I had business of my own to attend to, and I was wanting some money and I went away for that purpose: that was my main reason.

CROSS-EXAMINED.

Mr. REDICK. In regard to this \$3,000 that you was to give to Kennard, did not Gov. Butler say that that was to be loaned to Kennard at that time?

A. I would not be positive but what he did say it was to be a loan.

Q. Did you know, sir, whether the \$10,000 you was to furnish him was to be a loan also?

A. He didn't say anything to me about a loan of that.

Q. Didn't he offer to secure that amount to you?

A. Not when we was in that room he didn't.

Q. This note you gave him was before the interview in that room?

A. Yes, sir. It was before the settlement.

Q. Then, can you explain to the Senate why he demanded \$10,000 instead of \$5,000.

A. No, sir.

Q. I think I said that I had paid him \$5,000, and I think he said there was \$10,000 beside that, and I claimed that the contract didn't call for that and he insisted that it did.

Q. Could you read the contract?

A. Yes, sir.

Q. And you claimed that the contract only called for \$5,000 more than what you had paid him in the loan. Why didn't you pay that \$5,000 then?

A. Because I was out of money. I never intended to pay that.

Q. What did you tell him you would have the warrants drawn for, then?

A. I wanted to get my own warrants and keep them, and I took that way to get them.

Q. You don't want the Court to understand that you do that kind of business as a general rule?

A. No, sir. I do not.

Q. Would you have done that kind of business with the Representative to whom you made the offer of a thousand dollars if he would get your bill through?

A. No, sir. I would have stepped up and paid him—made him the present.

Q. To how many members of the Legislature did you make that offer, to six?

A. No, sir. I did not.

Q. Will you swear that you did not make it to five?

A. Yes, sir.

Q. Four?

A. Yes, sir.

Q. Three?

A. I would not swear that I remember of offering but to one.

Q. Do you remember what these three said?

A. I don't remember of making the offer but to one.

Q. Have you made the offer of any amount, directly or indirectly, to the Auditor of the State, or any State officer, to get your claim through?

A. No, sir.

Judge WAKELEY. Have you offered Mr. Redick anything?

A. No, sir. I have not.

Mr. REDICK. Certainly not. I would not take it. One thing I want to say to you. When you have got anything to offer, don't offer it to that gentleman, (Judge Wakeley,) for he will take it, sure.

Judge WAKELEY. You are right about that, Mr. Redick, that is the first point we agree on.

DAVID J. SILVER EXAMINED.

Judge WAKELEY. Where do you reside?

A. St. Louis, Missouri.

Q. What is your occupation?

A. A builder and contractor.

Q. Were you one of the contractors for the erection of the State University at this place?

A. Yes, sir.

Q. Are you the father of the witness, R. D. Silver?

A. I am.

Q. What was the style of your firm?

A. D. J. Silver & Son.

Q. When did you first have any personal share in the negotiations, or in the making of the contract.

A. The first knowledge that came

to me of the contract was in June, 1869, I believe.

Q. How did you derive that knowledge?

A. It was on the return of my son to Indiana. I was residing at Logansport, Indiana, at that time.

Q. What did you learn from your son in regard to that at that time?

Mr. REDICK. I object to that question.

Mr. ESTABROOK. Was not it afterwards brought to Gov. Butler? I want to learn these facts and then show it was connected with the Governor.

Mr. REDICK. I object to it; there is no use for that kind of a question.

Mr. WAKELEY. Did you do anything in consequence of that information about the contract?

A. I did, sir.

Q. State what you did first?

A. The first I did was to go, in company with my son, to Chicago.

Q. For what purpose?

A. To meet Gov. Butler.

Q. Did you there meet him?

A. I did.

Q. At what place?

A. At the Sherman House.

Q. About what time?

A. It was sometime in June, perhaps toward the latter part; I am not positive as to the date, but think it was about the 30th.

Q. At what time of day did you meet him?

A. I believe it was in the morning following our arrival there.

Q. Did you have an interview with him there?

A. I did.

Q. Who was present?

A. At our first interview there was quite a number there, I believe examining some plans for the Asylum.

Q. At what room or office in the building was that?

A. I do not remember the number of the room.

Q. Was it at one of the rooms in the Sherman House?

A. Yes.

Q. Did you have a subsequent interview with Gov. Butler?

A. Yes.

Q. Who was present then?

A. I think there was no one but he and myself. Perhaps my son might have been in during a portion of it; of that I would not be positive.

Q. At what room was that?

A. I think it was in the same room.

Q. Was it at the Governor's room?

A. Yes.

Q. What occurred at the interview of which you now speak between the Governor and you?

A. We talked over the matter of building here; in relation to the contracts, and so forth.

Q. What was said in respect to the contract?

A. He said he believed we could obtain it. I did not know then but what the basement was already let; I thought it was. He thought we would be able to get the whole of the contract for the entire building.

Q. Do I understand you the contract for the superstructure had not been let?

A. I think so.

Q. State the substance of what was said about the contract?

A. We went—

Mr. REDICK. I shall object to the witness stating the substance of anything. Let him state just what was said between Butler and himself, verbatim, if possible to do it.

The PRESIDENT. You will follow out the rule.

Mr. WAKELEY. State now, fully and particularly, all that occurred during this interview of which you now speak, and subsequently in Chicago between yourself and Gov. Butler.

The WITNESS. Well, we talked freely with regard to the building and the contract, and with regard to the proposition between him and my son—that we loan him \$5,000—to which I had objected. I did not like it; told him I did not like to go into a measure of that kind; I told my son so; he reported it; I also said to Butler I did not like to go into an arrangement of that kind, to pay \$5,000. He spoke of loaning some money upon lands; I understood it to be the place where he now lives; that he needed the money very much. I insisted upon his taking—if he had to have money—to take a less amount than \$5,000; the amount

I do not remember, perhaps one or two thousand; he insisted upon having \$5,000; after he insisted upon having \$5,000, I consulted with regard to it, and fell upon the basis that had been presented, in preference to being without anything.

Q. State, as fully as you can, all the conversation between the Governor and yourself, in respect to his giving this note and entering into the contract.

A. I was not in Chicago when the note was given. I returned home the next morning and sent forward the money by draft to Chicago. I was not present at the writing of the contract.

Q. State, then, as fully as you can, all that was said between the Governor and yourself, in respect to what the contract should be when made.

A. I cannot remember what conversation passed between us with regard to the contract; we talked it back and forth. I told him that in my mind I was not fully satisfied; that there would be no room in the contract for the payment of money; I would rather wait and see whether there was anything to be made out of it, and he said we would, in all probability, get the whole building, and I told him if we did, why I would rather see what the building might yield; it was impossible for any man to come within quite a long range of the cost of such a structure, there being no facilities whatever.

Q. Why was this put in the form of a loan, this \$5,000?

Mr. REDICK. I object to that, unless he speaks from his own knowledge.

Mr. WAKELEY. I am just speaking of this conversation between the Governor and himself.

The WITNESS. I suggested that myself.

Q. What did you say in suggesting it?

A. In my suggestions I said it would be better to make it the form of a loan and take a note for it, in order that we would have something to fall back upon.

Mr. REDICK. If the building did not yield?

The WITNESS. I did not feel like paying 5,000 without any show for it whatever, and did not know I would get it out of the building.

Q. What did the Governor say to that?

A. He consented to the arrangement.

Q. How long was that before the contract was finally signed?

A. My recollections are that the letting of the contract was in August and this would be in June.

Q. State more fully what you said to the Governor in regard to the danger or impropriety of it, that what you were talking of?

A. I told him I thought it was assuming a stand on dangerous ground; it was a matter men should be very careful about. I will not say that was the precise language.

Q. Did either of you refer to the fact of his being Governor, and what that had to do with the character of the transaction?

A. I do not remember whether I said anything to the Governor with regard to his being Governor; I know I talked about that to my son.

Mr. REDICK. Unless the Governor was present?

The WITNESS. I cannot remember distinctly.

Mr. WAKELEY. What response, if any, did the Governor make to your suggestion that it was dangerous?

A. I cannot remember what he did reply; what his reply was, if any, I cannot recollect.

Q. On what ground was it suggested to be dangerous?

Mr. REDICK. I object to that. We do not know where we will land. Let them state facts.

Mr. WAKELEY. I call the witnesses' attention to it.

Mr. ESTABROOK. Ask him to tell the facts, the ground upon which it was dangerous.

Mr. WAKELEY. What reason was assigned as to why it was dangerous to make a contract of that character?

A. I looked upon it as dangerous to take that stand in making the contract with this view before me, that these things were liable to be investigated in Omaha: that was my view then and it is now.

Q. Did the Governor say anything as to the danger of an investigation?

A. Well, I do not recollect his reply; to the best of my recollection, he thought there was no danger of anything of that kind. That is the best of my recollection.

Q. About how long did the interview last?

A. Probably we had two or three different interviews along from morning until toward evening; in fact we were traveling around the city together. We had several interviews that lasted half an hour. I cannot state precisely.

Q. What did the Governor first say on the subject of the money?

Mr. REDICK. I object to that, and everything you put in that shape hereafter.

Mr. ESTABROOK. What did the Governor say on the subject of the money?

Mr. REDICK. He has asked that.

Mr. WAKELEY. I asked him what the Governor first said on the subject of the money.

A. My recollection was that he wanted \$5,000.

Q. Upon what basis did he want the \$5,000?

A. Upon the basis, as I understand it, of the contract.

Q. What contract?

A. The contract for the University.

Q. Did he, or not say anything in respect to an agreement or understanding with your son here?

Mr. REDICK. I object to that, on the ground that it is leading. Put it in writing.

[The question was submitted in writing.]

The PRESIDENT read: Did he, or did he not say anything to you about any agreement or understanding with your son in respect to the money being paid to him, and if anything, what did he say?

A. He said there had been an understanding with my son and him with regard to the \$5,000. I think that is the substance. He would pay him \$5,000.

Mr. WAKELEY. When did you next see Gov. Butler?

The WITNESS. Not until the following September of the year 1869.

Q. Did nothing occur between you there in regard to this note?

A. No, sir; not a word.

Q. Did you have any subsequent interview with Gov. Butler in which anything did occur about the note?

A. Yes, sir.

Q. When?

A. Last August.

Q. Where?

A. In his office.

Q. State fully all that occurred between you.

A. He desired a receipt. He had it written out. I came to the State House, and he had the receipt written for this money, and desired I should sign it. I was somewhat reluctant about it because I had transacted none of the building business, but I did sign the receipt.

Q. What became of the receipt?

A. I do not know. I gave it to Butler.

Q. State the contents of it as near as you can.

A. Well, received of D. J. Silver & Son, so much money. I do not remember the exact wording throughout the receipt. It might have referred to the note and contract; I won't be positive. It was a regularly drawn up receipt.

Q. Do you know whether it covered the note in terms?

A. That I cannot remember. It may or it may not. I cannot recollect the language of the receipt.

Q. Had you received any money from the Governor?

A. No.

Q. On what ground did he ask you to give him the receipt?

A. He desired to make a showing to Mr. Kennard, in their business relations, that this money was paid.

Q. In what way did he claim it was paid or satisfied?

A. In no other way than a mere drawing of the receipt, except upon the basis of the contract. That might

have been his view, and it might have been the understanding at the time.

CROSS-EXAMINED.

By Mr. REDICK :

Q. You stated at the time Gov. Butler borrowed this money that you sent your son. He wanted to pay it upon certain land he had.

The WITNESS. Yes, that is the way I understood it.

Q. And you took the note the reason you wanted something to show in case the building did not yield sufficient profit?

A. Yes. I wanted something to show the payment of the \$5,000.

Q. Did you have any knowledge of your son's pretended note to Gov. Butler with the name torn off?

A. No. I know nothing about that.

Mr. WAKELEY. That is the case for the prosecution.

The respondent's counsel then called Hon. G. W. Frost.

G. W. FROST sworn and examined :

By Mr. REDICK :

Q. Mr. Frost, did you have any conversation with the Treasurer of this State, touching the five per cent. fund, as to whether it was in the State Treasury or not?

A. I did.

Q. State where the conversation took place, how it arose and what it was?

Mr. ESTABROOK. I object. The Treasurer is a competent witness, and I take it that no hearsay testimony, on the part of Mr. Frost, can be introduced in.

Mr. REDICK. Do you want me to put it in writing?

Mr. ESTABROOK. Yes, sir; we do.

[The question was submitted in writing.]

The PRESIDENT read : State what the State Treasurer told you about the five per cent. fund being in the Treasury?

Mr. REDICK. Senators: In regard to the legal question, as to whether

his conversation touching the transaction should be admitted, has been decided. The question in this litigation, involving the most material thing, is the school fund, and a very material issue is, whether it was in the State Treasury or-not—put there by Gov. Butler. To prove that it never was in there they come in and offer in evidence that Gov. Butler, at a certain time, said to Mr. Ambrose that it was not in the Treasury. We propose to show that it was there by the books of the State. That is one line; and also by the State Treasurer himself. The State Treasury does not speak only by its officers. We ask Mr. Frost to state to this Court what the State Treasurer told him in regard to the five per cent. fund. If he should say it was in the State Treasury, we submit whether it would not be testimony, and that is the main issue.

So, if you exclude us the right—if you say that is incompetent, you will reverse what this Senate has done before, because you admitted the statements of Sweet, and the statements of Brock, touching this five per cent. fund. It is the only way we can prove the admissions of the State, which is to prove them by its officers. The counsel for the State will say, perhaps, "Why don't you show your books." Now, if the State Treasurer did not do his duty, and put this matter of the five per cent. fund properly upon the books, we cannot help that, but are compelled to rely upon his statements. We have shown you that Gov. Butler did all he could to put that money in the Treasury. I expect to prove by this witness that Mr. Sweet told him here in Lincoln at a private conversation, in speaking of this matter, told him as a Republican, a neighbor and a friend, that this



money was in the State Treasury, safe and all correct.

**Mr. ESTABROOK.** I expressed yesterday a desire to see this case lifted up out of the realms of a farce. I wanted it conducted in such a manner that, when the report of it shall appear in pamphlet form and be put among the archives of the State, we will not be ashamed to read it. I admit that it is competent for you to show that this money was put in the Treasury, by the records. I admit that the testimony of the records of the State would be proper testimony. Mr. Sweet is a perfectly competent witness, but when we brought Mr. Sweet, the ex-Treasurer, upon the stand, they desired to impeach his testimony. In order to do this they asked him if he did not state such and such things, at such and such times, to certain individuals. If he says he did not, they try to make it a case of impeachment of the witness. Now, the question is, gentlemen, whether you shall do as you are asked to do—stultify yourselves. It is true, they brought a witness here to swear as to what Sweet said to certain witnesses at different times. Now we have got to a point where I ask, in all good faith, that this Senate abide by all the reasonable laws of testimony. They ask here, "What did Mr. Sweet tell you in regard to that deposit?" Now what Mr. Sweet told Mr. Frost will not impeach the testimony of Sweet, unless the foundation has first been laid by asking him if he had made certain statements, naming the time when, the place where, and then bringing this witness to prove these statements; but, gentlemen, I suppose I need not discuss this matter with you.

**The PRESIDENT.** I would like to ask whether, in the examination of Mr. Sweet, his attention was, or was

not, called to this conversation with Mr. Sweet?

**Mr. REDICK.** I am not certain, Mr. President, whether it was or not.

**Mr. MARQUETTE.** Mr. Sweet was the agent of this State. Anything that an officer does, in pursuance of an agency, is the same as though the act was done by the principal.

**The PRESIDENT.** The counsel for the respondent asks the witness this question, to which the counsel for the State make objections: "What did Mr. Sweet tell you with regard to the deposit of the five per cent. fund in the State Treasury, and when did he tell you; state all about it?" As many as are in favor of sustaining the exceptions will, as their names are called, answer "Aye"; contrary, "No."

The Secretary called the roll.

Those voting in the affirmative were Messrs. Gerrard, Hawke, Metz and Sheldon—4.

Those voting in the negative were Messrs. Brown, Cropsey, Hilton, Kennedy, Thomas, Tucker, Tennant and Mr. President—8.

**The PRESIDENT.** Four members having voted in the affirmative and eight in the negative, the objection is overruled.

**Mr. REDICK.** What did Mr. Sweet tell you with regard to the deposit of the five per cent. fund in the State Treasury, and when did he tell you. State all about it?

**The WITNESS.** Mr. Sweet told me the money was in the State Treasury.

**Q.** Where was this?

**A.** In the Auditor's office. I met Mr. Sweet there, and he made the statement to me that the report made to me by Mr. Brock was correct.

**Mr. REDICK.** What did the Deputy State Treasurer say to you?

**Mr. ESTABROOK.** I object to this. **Mr. REDICK.** (To witness.) Where did you see Mr. Brock?

**A.** I have letters from him, which I am going to read.

Mr. ESTABROOK. I object.

Mr. REDICK. Did you have any conversation with the Deputy State Treasurer with regard to the five per cent. fund?

A. I had letters from him, and statements.

Q. Did you bring these statements to the knowledge of the State Treasurer?

A. Yes, sir; I think I showed him the statements and letters. He said they were correct.

CROSS-EXAMINED.

Mr. ESTBAROOK. When was this conversation with Sweet?

A. I cannot recollect the time.

Q. I understand you to say that he said to you, that the report which Brock made was correct. Was that all he said?

A. No, sir; I said to him, "I want, as a Senator, to see the books." He said, if I wanted to see the books for myself I could see them, but he thought I wanted to have a third party see them.

Q. Did he refer to more than one statement?

A. Yes, sir; to two.

Q. Did he say that both were correct?

A. Well, the statements were made at my request. I was going before the people during the campaign, and I desired to know the facts about the matter, so that I might be able to represent it as it was, and sent to the Treasurer for a statement.

Q. Have you that statement with you?

A. No, sir; it is at my home.

Q. When did he make the second statement?

A. It was a corrected statement sent to me the next day. They were both sent to me at Omaha, and both represented the \$17,000 as being in the Treasury. I wrote to Mr. Sweet to let Mr. Alfred, my clerk, look at his books and make out a statement for me. I felt confident that he would get it correct, for he was a good book-keeper. But he refused to let any one look at the books, and made out the statement himself and sent it to me, and the next day he sent this second corrected statement. I have both statements at my house.

Senator TUCKER. Was the Auditor present at the time that Mr. Sweet made the statement to you in the Auditor's office that the five per cent. fund was in the Treasury, and if so, did he, the Auditor, object to the statement made by Mr. Sweet, the Treasurer?

A. I could not say whether the Auditor was present or not; there was several persons in the room, and we were standing by the window talking to ourselves.

THOMAS HOLLOWELL examined.

Mr. REDICK. Where did you reside in the fall of 1870?

A. Here in Lincoln.

Q. State whether or not you had any conversation with Robert J. Silver about the settlement for his building the University, in the fall of 1870, and if so, state where that conversation was had and how it arose?

A. Yes, sir; it was in Wilkinson's saloon. He first asked me if I had got my pay for my work on the Penitentiary in full, and I told him no, that I had got fooled out of \$800; and then I asked him if he had got his settled up? He said yes, and they paid him every cent. I said, did they ask you for anything, and he said not a cent.

Q. Was you approached this morning by any one about giving evidence here?

A. When I returned from dinner I heard that Silver had been on the stand, and the party that told me said he hoped there would be no cross-fire between me and Silver, as he was a friend of Silver's.

Q. Who was this party?

A. It was Mr. Hudson.

CROSS-EXAMINED.

Judge WAKELEY. Did you ask Silver, at the time of that conversation, if Gov. Butler had asked him for anything?

A. I asked him if the Commissioners had asked him for anything; I meant all of them.

Mr. REDICK. You don't mean Manager Hudson, do you?

A. No, sir; it was a different Hudson altogether—another man.

Mr. REDICK. Mr. President: I will offer the Respondent as a witness.

Mr. ESTABROOK. We object; this is a criminal case, and he cannot be allowed to testify in his own case.

Mr. REDICK. The only thing we want to introduce him for is to prove that he paid R. D. Silver \$5,500 in full of all claims against him which cannot be proven by any other witness.

Mr. REDICK. I will offer in evidence this receipt.

Mr. ESTABROOK. (After examining the receipt.) All right, sir.

Mr. REDICK. You don't object?

Mr. ESTABROOK. No, sir.

Mr. REDICK. I will read it in testimony. (Reads):

STATE OF NEBRASKA, }  
EXECUTIVE DEPARTMENT, }  
LINCOLN, June 18, 1870. }

Received of David Butler five thousand dollars in full payment of one promissory note, dated June 21, 1869, and made payable to D. J. Silver & Son, and this receipt is in full for all moneys, of whatever nature, received from us by David Butler up to date.

[Stamp.] D. J. SILVER & SON.

Mr. REDICK. You admit the signature?

Mr. ESTABROOK. We admit it to be the same receipt testified to.

Mr. REDICK. We do not admit it on that.

Mr. WAKELEY. If it is not the same receipt, you have no right to offer another one.

L. E. CROSEY sworn.

Mr. REDICK. Do you know that handwriting?

A. I do.

Q. Whose is it?

A. The old gentleman Silver, D. J. Silver & Son, written by him.

Q. Have you seen his handwriting frequently and think it his?

A. Yes.

Mr. REDICK. That receipt is offered in evidence; I withdraw my witness and submit my case right here.

Mr. ESTABROOK. Without argument?

Mr. REDICK. That is for you to say.

Mr. WAKELEY. What do you propose?

Mr. REDICK. I have spoken on this matter as much as I want to; we will submit this without argument; it is no use to take more of the time of the Senate.

Mr. ESTABROOK. We will accept that proposition with this modification, that Judge Wakeley, who was present several days and aided very materially in the prosecution of the Articles, whose name has been connected with it, has been called away by other duties, and who is now connected with it, be permitted to file, with the proceedings of the case, his own argument viewing the whole grounds.

Mr. REDICK. As far as I am concerned, I am perfectly glad to do that with Mr. Wakeley. I will be governed by the other counsel. It is only done simply out of professional courtesy.

Mr. WAKELEY. I only ask it in justice to myself. I will submit my argument to you, Mr. Redick; there shall be nothing in it you object to.

Mr. MARQUETTE. There might be some misconstruction.

Mr. ESTABROOK. The Judge proposes to submit it to you, with the privilege of answering it.

Mr. MARQUETTE. All right.

Mr. ESTABROOK. Let me make this suggestion, that there shall be a privilege of filing one on each side.

Mr. BRIGGS. I would like also the privilege of filing an argument.

Mr. WAKELEY. Most clearly.

The PRESIDENT. That being the case, you had better limit the time.

Mr. REDICK. Within thirty days.

Mr. ESTABROOK. Agreed.

The PRESIDENT. That being the case, we declare the case submitted.

The Senate will take it under advisement.

Mr. WAKELEY. The records say merely it is agreed.

Senator TUCKER. Mr. President: I move that we now retire to the Supreme Court room for consultation.

The PRESIDENT. It is moved and seconded that the Senate retire to the Supreme Court room for consultation. All favoring the motion will say "Aye"; contrary, "No." All the members voting in the affirmative, the motion prevails.

After the recess the Senate returned to the Senate chamber.

The PRESIDENT. The Secretary will proceed to call the roll.

The roll being called, all the Senators answered to their names.

The PRESIDENT. The Secretary will now proceed to read the first article of impeachment against David Butler, Governor of the State of Nebraska. Senators, you will please give attention, as your vote will be required after the reading of the same.

#### ARTICLE I.

That David Butler, Governor of the State of Nebraska, being authorized, and directed, by joint Memorial and Resolution of the Legislature of the State of Nebraska, in the following words, to-wit:

"Joint Memorial and Resolution to Congress, asking for five per cent. on the sales of the public lands.

WHEREAS, There is donated to the State of Nebraska, five per cent. of the proceeds of the sale of the public lands of the United States, within said State of Nebraska, and,

WHEREAS, The same is now due to the State of Nebraska, therefore be it

*Resolved*, That the Governor of the State is hereby authorized and directed to bring the matter to the attention of our Representative and Senators in Congress, and request them to unite with him in endeavors to secure the same to be paid

over to the Treasurer of State at as early a day as possible. And the Governor is hereby authorized to employ any other and further assistance that may be necessary to secure that result.

Approved June 24, 1867."

To secure from the Government of the United States, certain funds, being five per cent. of the proceeds of the sale of all public lands, lying within the State of Nebraska, belonging to said State, by virtue of section twelve, of an Act of Congress, entitled "An Act to Enable the People of Nebraska, to Form a Constitution and State Government, and for the Admission of such State into the Union, on an Equal Footing with the Original States." Approved April 19, 1864, did, in the spring of 1869, procure to be audited and allowed to the State of Nebraska, aforesaid, the sum of \$16,881.26, for which said sum, a warrant was issued by the proper department at Washington, payable to the order of said David Butler, as Governor of said State. That said warrant was brought to Omaha, in said State, by one E. B. Taylor, and by him deposited in the First National Bank, of Omaha, aforesaid, subject to the order of said David Butler, Governor, as aforesaid. That while so deposited, he, the said David Butler, Governor, as aforesaid, gave a Power of Attorney to one Nelson C. Brock, to endorse said warrant or draft, and receive the money thereon. That said Nelson C. Brock, by virtue of the authority so given, did endorse said warrant or draft; and receive thereon the sum of \$16,881.26, and did convey the same to Lincoln, in said State, and there deposited the same, in the Banking House of one James Sweet, and the said Nelson C. Brock with the consent and subject to the order and control of the said David Butler, Governor, as aforesaid. That while said money was so subject to his order and control, he, the said David Butler, Governor, as aforesaid, was guilty of unlawfully and corruptly neglecting to discharge his duty in regard to said money; and of appropriating the same to his own use and benefit, whereby he became and was guilty of misdemeanors in his said office.

**SPECIFICATION 1st.** That having said sum of \$16,881.26 under his control and subject to his order, he, the said David Butler, Governor, as aforesaid, did corruptly and unlawfully neglect, and refuse to pay the same into the Treasury of the State of Nebraska; and from the time said money was so under his control and subject to his order, to the time of exhibiting these articles, has so neglected and refused to pay the same into said Treasury, whereby said David Butler, Governor of the State of Nebraska, did then and there commit and was guilty of a misdemeanor in office.

**SPECIFICATION 2d.** That, having said sum of \$16,881.26 under his control and subject to his order, he, the said David Butler, Governor, as aforesaid, did, during the month of May, A. D. 1869, corruptly and unlawfully intermingle the same with his own private funds, and use the same for his own personal benefit. Whereby said David Butler, Governor of the State of Nebraska, did then and there commit and was guilty of a misdemeanor in office.

**SPECIFICATION 3d.** That having said sum of \$16,881.26 under his control and subject to his order, he, the said David Butler, Governor, as aforesaid, did, during the month of May, A. D. 1869, unlawfully and corruptly intermingle with his own private funds, and use for his own private benefit, a part of said money, to-wit: The sum of \$1,881.26, whereby said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of a misdemeanor in office.

**SPECIFICATION 4th.** That having said sum of \$16,881.26 under his control and subject to his order, he, the said David Butler, Governor, as aforesaid, did cause the same to be deposited in the Banking House of James Sweet and Brock, in the city of Lincoln, Nebraska, on the 25th day of May, A. D. 1869, and from thence, from time to time during the years 1869 and 1870, unlawfully and corruptly draw out, handled, employed and used, the same as his own private funds, and for his own private use and benefit; whereby the said David Butler, Governor of the State of Nebraska, then and there committed, and

was guilty of a misdemeanor in office.

The **PRESIDENT.** The Secretary will call the roll, and as each name is called the Senator will rise in his seat and vote "guilty" or "not guilty," upon the first article.

The **SECRETARY.** Mr. Brown. Senator Brown rose in his seat.

The **PRESIDENT.** Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty or not guilty of misdemeanor in office as charged in this article?

Senator **BROWN.** "GUILTY!"

The **SECRETARY.** Mr. Cropsey. Senator Cropsey rose in his seat.

The **PRESIDENT.** Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty or not guilty of misdemeanor in office, as charged in this article.

Senator **CROPSEY.** "GUILTY!"

The **SECRETARY.** Mr. Gerrard. Senator Gerrard rose in his seat.

The **PRESIDENT.** Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty or not guilty of misdemeanor in office, as charged in this article?

Senator **GERRARD.** "GUILTY," as charged in the first specification.

The **SECRETARY.** Mr. Hawke. Senator Hawke rose in his seat.

The **PRESIDENT.** Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty or not guilty of misdemeanor in office, as charged in this article?

Senator **HAWKE.** "GUILTY,"

The **SECRETARY.** Mr. Hilton. Senator Hilton rose in his seat.

The **PRESIDENT.** Mr. Senator:

How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty, or not guilty of misdemeanor in office, as charged in this article?

Senator HILTON. "NOT GUILTY!"

The SECRETARY. Mr. Metz.  
Senator Metz rose in his seat.

The PRESIDENT. Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty, or not guilty of misdemeanor in office, as charged in this article?

Senator METZ. "GUILTY!"

The SECRETARY. Mr. Kennedy.  
Senator Kennedy rose in his seat.

The PRESIDENT. Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty, or not guilty of misdemeanor in office, as charged in this article.

Senator KENNEDY. "GUILTY," of the first and fourth specifications.

The SECRETARY. Mr. Sheldon.  
Senator Sheldon rose in his place.

The PRESIDENT. Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty, or not guilty of misdemeanor in office, as charged in this article?

Senator SHELDON. "GUILTY!"

The SECRETARY. Mr. Thomas.  
Senator Thomas rose in his seat.

The PRESIDENT. Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty, or not guilty of misdemeanor in office, as charged in this article?

Senator THOMAS. "GUILTY!"

The SECRETARY. Mr. Tucker.  
Senator Tucker rose in his seat.

The PRESIDENT. Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty, or not guilty of misdemeanor in office, as charged in this article?

Senator TUCKER. "NOT GUILTY!"

The SECRETARY. Mr. Tennant.  
Senator Tennant rose in his seat.

The PRESIDENT. Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty, or not guilty of misdemeanor in office, as charged in this article.

Senator TENNANT. "NOT GUILTY!"

The SECRETARY. Mr. President.  
The President rose in his place.

The SECRETARY. Mr. President: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty, or not guilty of misdemeanor in office, as charged in this article?

The PRESIDENT. "GUILTY!"

The SECRETARY. The Senators voting "Guilty" are Messrs. Brown, Cropsey, Gerrard, Hawke, Metz, Kennedy, Sheldon, Thomas, and Mr. President.

Those voting "Not Guilty" are Messrs. Hilton, Tucker, and Tennant.

The PRESIDENT. Nine Senators have voted "Guilty," and three "Not Guilty" of the first article of the articles of impeachment.

What is the further pleasure of the Senate?

Senator TUCKER. I move that the Senate, sitting as a Court of Impeachment, now adjourn until ten o'clock to-morrow morning.

Senate adjourned.

FRIDAY, June 2, 1871.

The Senate, sitting as a Court of Impeachment, called to order by the President at 10 A. M.

The Sergeant-at-Arms made the usual proclamation.

Roll called. All the Senators present.

The Managers and their counsel and the Respondent and his counsel entered the Senate chamber and took the seats assigned them.

Senator GERRARD. Mr. President: When the question of guilty or not guilty of the first article was asked me, I voted "guilty, as charged in the first specification," and I desire my vote so to appear upon the journal, under the order adopted by the Senate for taking the vote.

The PRESIDENT. The Secretary will again read that part of the journal relating to the vote taken on the first article. (Secretary reads article.)

Senator Gerrard answered "Guilty of the first specification."

The PRESIDENT. The journal is defective in not stating the question of the President in the language in which it was propounded, and the reply as given by the Senator.

Senator GERRARD. I have no objection to the question as properly put being entered on the journal.

The PRESIDENT. If there is no objection the Secretary will make the journal complete, state in detail what occurred, and give the question as propounded to the several Senators. The Secretary will re-write the journal in that respect. The Secretary will now proceed to read the second article of the articles of impeachment.

Senator GERRARD. I move that the Senate sitting as a Court of Impeachment retire for consultation.

The PRESIDENT. It is moved and seconded that this Senate, sitting as a Court of Impeachment, now retire for consultation. All in favor of

so retiring will please say "Aye," Contrary, "No." All the members having voted in the affirmative, the motion prevailed, and the Senate will retire accordingly.

Senate was called to order in secret session, all the members being present.

Senator GERRARD moved the adoption of the following order:

Ordered, that the further voting on the articles of impeachment in the case of the impeachment of David Butler, Governor of the State of Nebraska, be indefinitely postponed.

The PRESIDENT. All favoring the motion will say "Aye," contrary "No." The Secretary will call the roll.

The following is the vote:

Ayes—Brown, Cropsey, and Gerrard.—3.

Nays—Hawke, Sheldon, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, and Mr. President.—9.

The PRESIDENT. Three having voted in the affirmative and nine in the negative, the motion is lost.

On re-assembling, the Senate was brought to order and the roll called, all the members present.

The PRESIDENT. The Sergeant-at-Arms may notify the counsel for the respondent that they may be present if they desire.

Messrs. Redick and Briggs entered the chamber.

The PRESIDENT. The Secretary will read Article II.

The Secretary read as follows:

#### ARTICLE II.

That said David Butler, Governor of the State of Nebraska, in the exercise of the powers and prerogatives conferred upon and belonging to him by law as such Governor, has corruptly and unlawfully used and offered and attempted to use such official

powers and prerogatives, and corruptly and unlawfully refused to perform his duties as such Governor, for the purpose and object and with the intent of securing to himself profits, gain and emolument, and with intent to extort money or advantage from persons having claims against the State, or seeking some office, right or privilege under the laws thereof.

**SPECIFICATION 1st.** That the said David Butler, Governor of the State of Nebraska, being by virtue of that office, one of the Commissioners authorized by an Act of the Legislature of the State of Nebraska, entitled "An Act to provide for sale of the unsold lots and blocks in the town-site of Lincoln, and for the location and erection of a State University and Agricultural College, and State Lunatic Asylum, approved February 15th, 1869," to expend monies belonging to the State of Nebraska, in and about the erection of a building for a State University, and to audit and allow claims and accounts therefor. And one, M. J. McBird, having a claim and demand against the State for services by him performed as architect in and about furnishing plans and specifications for said buildings, he, the said McBird in the month of August, A. D. 1869, at Lincoln, in said State did present his said claim and demand for allowance and approval to the said David Butler, Governor as aforesaid, who did then and there, scandalously and corruptly offer and propose to the said McBird in substance and to the effect following: That he, the said David Butler, Governor as aforesaid, would procure to be issued a warrant upon the Treasurer of the State of Nebraska, for the sum of three thousand seven hundred and fifty dollars in favor of said McBird, for his said services, provided and on condition that said McBird should retain the sum of two thousand dollars only out of the proceeds of such warrant to-wit: the money to be drawn from the State Treasury thereupon, and should pay to him the said David Butler, for his use and disposal the sum of seventeen hundred and fifty dollars of such proceeds, and that unless the said McBird would promise so to do, he the said David Butler would allow said McBird only fifteen hundred dollars upon his said

claim and demand. And thereupon the said McBird did agree to the said David Butler, Governor as aforesaid, immediately caused and procured such warrant to be issued for the sum of three thousand seven hundred and fifty dollars in favor of said McBird, who thereupon in the month of August, A. D. 1869, obtained and received upon such warrant the sum of three thousand seven hundred and fifty dollars, and did in pursuance of the said scandalous and corrupt agreement at the office of said Governor in Lincoln, in the State of Nebraska, in the month of August, A. D. 1869, pay to and leave with said David Butler, Governor as aforesaid, part of said money to-wit: The sum of seventeen hundred and fifty dollars. And the said David Butler, Governor as aforesaid, did then and there receive the same in pursuance of such scandalous and corrupt agreement, contrary to his duty and his oath of office, and whereby the said David Butler, Governor of Nebraska, did then and there commit and was guilty of a misdemeanor in office.

**SPECIFICATION 2d.** That the said David Butler, Governor of the State of Nebraska, being such Commissioner and having such authority as set forth in the last above specification. The said M. J. McBird mentioned therein, presented to the said Governor at Lincoln, in said State of Nebraska, in the month of November, A. D. 1869, another demand and claim for additional services as architect in and about the making of plans and specifications for and superintending the erection of the aforesaid State University building, and thereupon the said David Butler, did then and there, scandalously and corruptly agree with the said McBird in substance and to the effect that the said Butler, as Governor as aforesaid, would allow the said McBird's claim and demand at the sum of one thousand eight hundred and twenty-eight dollars and twenty-six cents, and that the said McBird would in consideration thereof pay to him, the said David Butler one-half thereof, and thereupon the said David Butler, Governor as aforesaid, did allow such claim and demand at said sum, and procure and



cause to be issued thereupon two warrants upon the Treasurer of the State of Nebraska, each for the sum of nine hundred and fourteen dollars and thirteen cents, and then and there in pursuance of the said scandalous and corrupt agreement, the said McBird endorsed and delivered one of the said warrants to said David Butler, who received and kept the same. Thereby the said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of a misdemeanor in office.

SPECIFICATION 3d. That the said David Butler, Governor, as aforesaid, acting as one of the Board of Building Commissioners of the State of Nebraska, and together with the other members of said Board, during the year 1869, did enter into contract with D. J. Silver and Son, for the erection of the building known as the University, at Lincoln, Nebraska. That about the 29th day of November, A. D. 1870, in, and during an interview between R. D. Silver, son of D. J. Silver, and one of said contractors, and the said David Butler, in the private office of the said David Butler, Governor, as aforesaid, he, the said David Butler, asked the said Robert D. Silver if he was not going to do something for him, the said David Butler, and said he thought he, the said R. D. Silver, ought to give him, the said David Butler, Governor, as aforesaid, ten thousand dollars, and refused to settle the accounts of the said D. J. Silver and Son, until he, the said R. D. Silver, acquiesced in such demand, so that he, the said Silver, was constrained to, and did agree to give to the said David Butler, Governor, as aforesaid, the sum of ten thousand dollars. That a few days afterwards he, the said David Butler, Governor, as aforesaid, called the said Silver into the private office of him, the said David Butler, Governor, as aforesaid, and again asked the said Silver if he was not going to give him, the said David Butler, Governor, as aforesaid, the said ten thousand dollars, as he had agreed to do, and upon being answered in the negative by him, the said Silver, he, the said David Butler, Governor, as aforesaid, became angry and used harsh and threatening language towards him, the said Robert

D. Silver, saying menacingly that he would remember him for that; whereby the said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of a misdemeanor in office.

SPECIFICATION 4th. That under, and by virtue of An Act of the Legislature of the State of Nebraska, entitled "An Act to lease certain Saline lands to Anson C. Tichenor, Jesse F. Green and others," approved February 15th, 1869; the said David Butler, Governor of the State of Nebraska, at the time hereinafter next mentioned, had authority to lease to any competent party or parties, certain Saline lands belonging to the State of Nebraska. Thereupon to-wit: On the 15th day of July, A. D. 1869, one Thomas F. Hall, a party competent to take and receive a lease of the said lands, did apply to the said David Butler, Governor, as aforesaid, at Lincoln, said State of Nebraska, for a lease of certain of the said Saline lands, in Township ten, (10) north of Range six (6), East of the sixth Principal Meridian, in the county of Lancaster, in the State of Nebraska; and the said David Butler, Governor, as aforesaid, did, then and there, wilfully and corruptly suggest, propose and offer to the said Thomas F. Hall, that if he, the said David Butler, should receive the sum of five thousand dollars for his own use and benefit, he would, as Governor, as aforesaid, lease the said lands to the said Thomas F. Hall, and did then and there wilfully and corruptly indicate to the said Thomas F. Hall, and give him to understand, that unless he, the said David Butler, Governor as aforesaid, should receive the said sum of five thousand dollars, as aforesaid, he would refuse to lease the said lands to him, the said Thomas F. Hall, and because said Thomas F. Hall did decline and refuse to pay or offer to said David Butler, Governor, as aforesaid, any sum of money or consideration therefor, to the said David Butler, Governor, as aforesaid, did wilfully and corruptly decline and refuse to lease the said Saline lands to the said Hall, contrary to his duty and his oath of office as Governor; and whereby David Butler, Governor of the State

of Nebraska, did commit, and was guilty of a misdemeanor in office.

**SPECIFICATION 5th.** That the said David Butler, Governor of the State of Nebraska, being by virtue of his office the President, and a member of the Board of Regents, known as The Regents of the University of Nebraska, and the said Board of Regents having power and authority to appoint a Treasurer of the said Board, said David Butler, Governor, and President and member of the Board of Regents, as aforesaid heretofore, to-wit: On the first day of January, A. D. 1871, at Lincoln, in the State of Nebraska, did wilfully and corruptly promise to, and agree with one Nelson C. Brock, that he, the said David Butler, would endeavor to procure the appointment of the said Nelson C. Brock, as Treasurer of the said Board of Regents, and would use his vote and influence as a member, and as President of the said Board, for the purpose of securing and with a view and to the end of procuring such appointment, for a consideration, in money, to-wit:—the sum of seven hundred and fifty dollars, to be paid by said Brock, to him, said David Butler, in case the said David Butler should so secure such appointment, contrary to his duty and oath of office, and whereby said David Butler, Governor of the State of Nebraska, then and there committed, and was guilty of a misdemeanor in office.

**SPECIFICATION 6th.** That the said David Butler, Governor of the State of Nebraska, and President and member of the Board of Regents, as set forth in the last above specification, did heretofore, to-wit: On the first day of January, 1871, at Lincoln, in the State of Nebraska, improperly, disgracefully, and Scandalously receive, entertain and tolerate a proposition, then and there made to him, as such Governor, and President and member of said Board of Regents, by one Nelson C. Brock, to the effect, that if the said David Butler would, by his influence and efforts, obtain and secure the appointment of the said Nelson C. Brock as Treasurer of said Board of Regents, he, the said Brock, would pay the said David Butler a large sum of money, to-wit: Seven hundred and fifty dollars; whereby the said David Butler, Governor of

the State of Nebraska, did bring scandal and disgrace upon his exalted office, and did then and there commit, and was guilty of a misdemeanor therein.

**SPECIFICATION 7th.** That under and by virtue of an Act of the Legislature of the State of Nebraska, entitled, "An Act to provide for the sale of the unsold lots and blocks in the town site of Lincoln, and for the location and erection of a State University and Agricultural College, and State Lunatic Asylum." Approved February 15th, 1869, the said David Butler, Governor of the State of Nebraska, was one of the Commissioners authorized to locate a State Lunatic Asylum, at or near the town site of Lincoln. And in the summer of the year 1869, to-wit: On the 1st day of July, A. D. 1869, at Lincoln, in the State of Nebraska, the said David Butler, Governor as aforesaid, received and consented to a certain conveyance from one Dr. French, of the North half of the Northwest quarter, of section ten in township nine, north of range six east, in Lancaster County, State of Nebraska; or took such conveyance thereof from some person or persons unknown to himself, or to some person or persons unknown, for his benefit in whole or in part, which was so made to, and accepted by the said David Butler, for a consideration greatly below the value of the said land, as an inducement and bribe to influence his action and decision relative to the location of said Asylum, and by which he was improperly and corruptly influenced to decide as one of said commissioners, in favor of locating said Asylum, in the immediate vicinity of said land so conveyed, and where said Asylum was soon thereafter located, whereby the said David Butler, Governor of the State of Nebraska, then and there committed, and was guilty of a misdemeanor in office.

The PRESIDENT. The Secretary will call the roll.

The SECRETARY. Mr. Brown. Senator Brown rose in his seat.

The PRESIDENT. Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of

Nebraska, guilty or not guilty of misdemeanor in office, as charged in this article?

Senator BROWN. "GUILTY."

[The same order was followed as the name of each Senator was called.]

The SECRETARY. Those senators voting David Butler, Governor of the State of Nebraska, "Guilty," as charged in this article, are Messrs. Cropsey, Metz, Sheldon, Thomas, and Hascall.—5.

Those voting "Not Guilty," are Messrs. Brown, Gerrard, Hawke, Hilton, Kennedy, Tucker, and Tennant.—7.

Senator Sheldon voted "Guilty" upon the 3d and 4th specifications.

Senator Thomas voted "Guilty," as charged in the article, and in specifications 3d and 4th.

The PRESIDENT. On this article five Senators have voted "Guilty," and seven "Not Guilty."

The PRESIDENT. The Secretary will read article III.

### ARTICLE III.

That on the 18th day of February, A. D. 1869, one Champion S. Chase, Esq., was, and for sometime the last past, had been an Attorney for the State of Nebraska, retained and employed by the Governor of said State, and had as such Attorney rendered certain services for the said State, and it was the duty of the said David Butler, Governor of the State of Nebraska, under and by virtue of the law thereof, to determine what compensation for such service, was fair and just, and according to what was paid in similar cases. And thereupon, to-wit: On the 18th day of February, A. D. 1869, the said David Butler, Governor, as afore said, did, willfully, falsely, and corruptly, determine and represent to John Gillespie, then the Auditor of said State of Nebraska, that he, the said David Butler, Governor, as aforesaid, deemed the sum of two thousand dollars to be a

just and fair compensation for the services so rendered by the said Champion S. Chase, Attorney as aforesaid, and did willfully, corruptly and unlawfully, induce and cause the said Auditor to issue two certain warrants upon the Treasurer of said State of Nebraska, for the sum of one thousand dollars each, under the pretense that the same were issued for the services of the said Chase as such Attorney; he, the said David Butler, Governor as aforesaid, then well knowing that said sum of two thousand dollars was a much larger sum than was fair or just for such services, or was paid for similar services, and not intending that the whole thereof should be paid to the said Chase, but corruptly intending to appropriate one of the said warrants to his own use, and thereupon, to-wit: On the 22d day of February, A. D. 1869, the said David Butler, Governor, as aforesaid, did willfully and corruptly appropriate, to his own use, one of the said warrants, and upon, and by virtue of the same, did draw and receive from James Sweet, the Treasurer of the State of Nebraska, the sum of one thousand dollars, which he then and there appropriated to his own use and benefit, contrary to his duty and his oath of office, whereby the said David Butler, Governor of the State of Nebraska, then and there committed, and was guilty of a misdemeanor in office.

The PRESIDENT. The Secretary will call the roll.

The SECRETARY. Mr. Brown. Senator Brown rose in his seat.

The PRESIDENT. Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty, or not guilty of misdemeanor in office, as charged in this article?

Senator BROWN. "GUILTY."

[The same order was followed as the name of each Senator was called.]

The SECRETARY. Those Senators voting "Guilty," are Messrs. Brown, Hawke, Metz, Kennedy, and Tennant.

Those voting "Not Guilty," are Messrs. Cropsey, Gerrard, Hilton, Sheldon, Thomas, Tucker, and Mr. President.

The PRESIDENT. On this article five Senators have voted "Guilty," and seven "Not Guilty."

The Secretary will proceed to read the 4th article.

The Secretary read as follows:

#### ARTICLE IV.

That the said David Butler, so being Governor, as aforesaid, in the year A. D. 1869, being by virtue of his office, one of the Commissioners provided for by "An Act to provide for the sale of the rentals, lots, and blocks on the town site of Lincoln, and for the location and erection of a State University and Agricultural College and State Lunatic Asylum, approved February 15th, 1869, to locate a site for a State Lunatic Asylum, and to direct the expenditure of the sums named in said act in the building of a State Lunatic Asylum," did unlawfully and corruptly enter into contract with one Joseph Ward for the completion of the said Lunatic Asylum, at a contract price greatly to-wit: Eighty-eight thousand dollars in excess of the sum appropriated for said building. That he, the said Governor, well knew at the time that said Ward was entirely irresponsible and unable to give the bonds required by law, that he had no qualification nor capacity as a builder, that by the terms of said contract the foundation of said Asylum was to be completed for eighteen thousand and five hundred dollars, and that in the spring of 1870, said foundation was not finished, and there was due to said Ward less than that sum upon said contract, yet the Governor, well knowing the premises, approved the estimates of said Ward, and caused the same to be allowed and paid to the amount of forty-five thousand dollars. Whereby he, the said David Butler, Governor, as aforesaid, did then and there commit, and was guilty of misdemeanor in his said office.

The PRESIDENT. The Secretary will call the roll.

The SECRETARY. Mr. Brown. Senator Brown rose in his seat.

The PRESIDENT. Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty or not guilty of a misdemeanor in office, as shown in this article?

Senator BROWN. "NOT GUILTY."

[The same order was followed as the name of each Senator was called.]

The SECRETARY. Those Senators voting that David Butler, Governor of the State of Nebraska, is not guilty of misdemeanor in office, as charged in this article, are Messrs. Brown, Cropsey, Gerrard, Hawke, Hilton, Metz, Sheldon, Thomas, Tucker, Tennant, and Mr. President.

Mr. KENNEDY. "GUILTY."

The PRESIDENT. On this article 4th one Senator has voted "Guilty," and eleven "Not Guilty."

The Secretary will read the next article.

The Secretary read as follows:

#### ARTICLE V.

That said David Butler, being Governor as aforesaid, in the year 1869, being a member of the Board of Regents of the University of Nebraska, and ex-officio President of said Board at Lincoln, in the State of Nebraska, did willfully and recklessly assent, and become a party to a contract with D. J. Silver & Son, dated August 18, 1869, for the erection of the State University and Agricultural College of Nebraska, at a price greatly in excess of the appropriation therefor, whereby said David Butler, Governor of the State aforesaid, then and there committed and was guilty of a misdemeanor in office.

The PRESIDENT. The Secretary will call the roll.

The SECRETARY. Mr. Brown. Senator Brown rose in his seat.

The PRESIDENT. Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty or not guilty of a misdemeanor in office, as charged in this article?

Senator BROWN. "NOT GUILTY."

[The same order was followed as the name of each Senator was called.]

The SECRETARY. Those Senators voting David Butler, Governor of the State of Nebraska, "Not Guilty," as charged in this article are Messrs. Brown, Cropsey, Gerrard, Hawke, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, and Mr. President. None voting guilty.

The PRESIDENT. On this article all the the Senators have voted "Not Guilty."

The Secretary will proceed to read the 6th article.

The Secretary read as follows:

#### ARTICLE VI.

That, at the present session of this Legislature, in the month of January last, the House of Representatives, of the State of Nebraska, passed a resolution in the words, and to the effect following to-wit:

"Resolved, that the Governor is hereby requested to communicate to this House, at the earliest moment, the name of the agent appointed by authority of An Act of the Legislature, to collect from the United States, the five per cent. upon the sales of public lands set apart for school purposes, prior to the admission of the State. The amount so accrued and due to the State, and the amount collected and paid into the State Treasury. Also the amount paid to said State agent for his services."

And thereupon, the said resolution was duly communicated to the said David Butler, Governor of the State of Nebraska, and in response thereto the said Governor, on the 25th day of January, A. D. 1871, sent and transmitted to the said House of Representatives, a communication, in the words and to the effect following to-wit:

"To the Honorable the Speaker of the House of Representatives:

In response to a resolution passed by the Honorable House of Representatives, relative to the collection of the five per cent. funds, I submit the following report: Amount accrued and due the State, January 1st, 1869, \$16,881 26. While in Washington, in the spring of 1869, I secured the auditing and payment of this claim, and deposited the above amount in the State Treasury. No fee or commission was paid any agent for its collection.

(Signed.) DAVID BUTLER."

In which communication the said David Butler, Governor, as aforesaid, did falsely declare that he deposited the amount of money therein mentioned, in the State Treasury, well knowing that he had not deposited the same, or any part thereof in such Treasury; and intending thereby to deceive the House of Representatives, the Legislature and the people of said State, in the particulars last mentioned, contrary to his duty, and his oath of office; and whereby the said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of a misdemeanor in office.

The PRESIDENT. The Secretary will call the roll.

The SECRETARY. Mr. Brown. Senator Brown rose in his seat.

The PRESIDENT. Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty or not guilty of misdemeanor in office, as charged in this article?

Senator Brown. "NOT GUILTY."

[The same order was followed as the name of each Senator was called.]

The SECRETARY. Those Senators voting in the affirmative are Messrs. Metz, Kennedy, Sheldon, Thomas, and Mr. President.—5.

Those voting in the negative are Messrs. Brown, Cropsey, Gerrard, Hawke, Hilton, Tucker, and Tennant.—7.

The PRESIDENT. On this article five Senators have voted "Guilty," and seven "Not Guilty."

The PRESIDENT. The Secretary will read article VII.

#### ARTICLE VII.

That the said David Butler, Governor of the State of Nebraska, being authorized and empowered by the provisions of an act entitled "An Act to amend An Act to provide for the Registry of School Land, for the control and disposition thereof, and for the safe keeping of the funds derived from the sale and lease of said lands." Approved, February 15th, 1869, in conjunction with the Land Commissioner and Treasurer of the State, to invest certain funds, received by such Treasurer, as advance or full payment by the purchases of school lands, in United States, State, or other good and sufficient securities, which securities should bear not less than six per cent. annual interest, did unlawfully, and wilfully advise and consent to the loaning of such funds, and did procure the same to be loaned in divers sums and to divers persons, and did cause the same to be loaned improvidently, recklessly, and without any authority of law, and regard to the public interests, and upon totally insufficient and inadequate security, and without concurrent action thereon by the said Treasurer and Auditor.

SPECIFICATION 1st. He, the said David Butler, Governor, as aforesaid, did, on or about the 30th day of July, A. D. 1870, instruct James Sweet, State Treasurer, he being then and there the custodian of said School funds, to let one Anson C. Tichenor, have \$10,000.00 of said school money, and he, the said David Butler, Governor, as aforesaid, would approve the security therefor. That said sum was loaned to said Tichenor without the assent of either the State Auditor or Treasurer. That the security taken therefor was, and by him, the said Governor, was at the time known to be wholly inadequate and insufficient; whereby the said David Butler, Governor of the State of Nebraska, then and there committed, and was guilty of, a misdemeanor in office.

The PRESIDENT. The Secretary will call the roll.

The SECRETARY. Mr. Brown. Senator Brown rose in his seat.

The PRESIDENT. Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty or not guilty of misdemeanor in office, as charged in this article?

Senator BROWN. "NOT GUILTY."

[The same order was followed, as the name of each Senator was called.]

The SECRETARY. Those Senators voting "Guilty" are Messrs. Cropsey, Kennedy and Sheldon. Those voting "Not Guilty" are Messrs. Brown, Gerrard, Hawke, Hilton, Metz, Thomas, Tucker, Tennant and Mr. President.

The PRESIDENT. On this article three Senators have voted "Guilty," and nine have voted "Not Guilty."

The Secretary will read the Article VIII.

The Secretary read as follows:

#### ARTICLE VIII.

That the said David Butler, Governor of the State of Nebraska, in the year 1869, but at what particular time is unknown, at Lincoln, in the State of Nebraska, did receive a sum of money, to-wit: The sum of six hundred and forty-eight dollars and forty-three cents, a balance of monies in the hands of one Thomas L. Griffey, Treasurer of the Board of Immigration, and belonging to the State of Nebraska, and which money the said David Butler, Governor, as aforesaid, has never paid into the Treasury of this State, but has wilfully, corruptly and unlawfully appropriated to his own use, whereby the said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of, a misdemeanor in office.

The PRESIDENT. The Secretary will call the roll.

The SECRETARY. Mr. Brown.

Senator Brown rose in his seat.

The PRESIDENT. Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty or not guilty of misdemeanor in office, as charged in this article?

Senator BROWN. "Not Guilty."

[The same order was followed, as the name of each Senator was called.]

The SECRETARY. Those Senators voting David Butler, Governor of the State of Nebraska, "Not Guilty," are Messrs. Cropsey, Gerrard, Hawke, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant and Mr. President, and none voting "Guilty."

The PRESIDENT. On this article all the Senators have voted "Not Guilty." The Secretary will read article IX.

The Secretary read as follows:

#### ARTICLE IX.

That said David Butler, Governor of the State of Nebraska, in the year 1870, but at what particular time is unknown, at Lincoln, in the State of Nebraska, regardless of his duty, and his oath of office, did improperly, partially, willfully and unlawfully execute and cause to be issued and delivered to the Sioux City and Pacific Railroad Company, a patent or patents of the State of Nebraska, of and for a large quantity of the public lands belonging to the State of Nebraska, to-wit: Seventy-five sections thereof, situate in the counties of Dodge, Burt and Cuming, and being the same lands granted or secured by an act of the Legislature of this State, to the Northern Nebraska Air Line Railroad Company; whereby the said David Butler, Governor of the State of Nebraska, then and there committed, and was guilty of, a misdemeanor in office.

The PRESIDENT. The Secretary will call the roll.

The SECRETARY. Mr. Brown. Senator Brown rose in his seat.

The PRESIDENT. Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty or not guilty of misdemeanor in office, as charged in this article?

Senator BROWN. "Not Guilty."

[The same order was followed, as the name of each Senator was called.]

The SECRETARY. Those Senators voting David Butler, Governor of the State of Nebraska, "Not Guilty," as charged in this article, are Messrs. Brown, Cropsey, Gerrard, Hawke, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant and Mr. President. None voting "Guilty."

The PRESIDENT. On this article all the Senators have voted "Not Guilty." The Secretary will proceed to read article X.

The Secretary read as follows:

#### ARTICLE X.

That the said David Butler, Governor, as aforesaid, at divers times, between the 15th day of February, 1869, and the time of exhibiting these articles, but at what particular time is unknown, did sell to divers persons, but to what particular persons is not known, lots and blocks in the city of Lincoln, Nebraska, and lands belonging to the State of Nebraska, but what particular lots and blocks, or lands, is unknown, at private sale, the title to which said lots and blocks, and lands, was at the time of such sale in the State of Nebraska, and a portion of the purchase money of such lots and blocks and lands, did appropriate to his own private use and benefit.

SPECIFICATION 1st. That said David Butler, Governor, as aforesaid, of the State of Nebraska, in the month of December, A. D. 1869, sold to one James G. Gerrens, the Southeast quarter of section thirty (30), in township ten (10), North of range six (6), East, in Lancaster county, in the State of Nebraska, belonging to the State of Nebraska, for the sum of nineteen hundred and twenty dollars, of which

sum received therefor, he appropriated to his own use and benefit, the sum of eleven hundred and twenty dollars; whereof, the said David Butler, Governor of the State of Nebraska, then and there committed, and was guilty of, a misdemeanor in office.

The PRESIDENT. The Secretary will call the roll.

The SECRETARY. Mr. Brown. Senator Brown rose in his seat.

The PRESIDENT. Mr. Brown: How say you? Is David Butler, Governor of the State of Nebraska, guilty, or not guilty of misdemeanor in office, as charged in this article?

Senator BROWN. "NOT GUILTY."

[The same order was followed as the name of each Senator was read.]

The SECRETARY. Those voting David Butler, Governor of the State of Nebraska, "Not Guilty" are Messrs. Brown, Cropsey, Gerrard, Hawke, Hilton, Tetz, Kennedy, Sheldon, Thomas, Tucker, Tennant, and Mr. President—12.

The PRESIDENT. All have voted "Not Guilty."

The PRESIDENT. The Secretary will read Article Eleven.

#### ARTICLE XI.

That said David Butler, Governor of the State of Nebraska, by An Act of the Legislature, of the State of Nebraska, entitled "An Act to provide for the sale of the unsold lots and blocks in the town site of Lincoln, and for the location and erection of a State University and Agricultural College, and State Lunatic Asylum," approved February 15th, 1869, was made a Commissioner in conjunction with the Secretary of State and Auditor to sell the unsold lots and blocks in the town site of Lincoln. That said David Butler, Governor, as aforesaid, in the discharge of the duties of such Commissioner, between the 15th day of February, A. D. 1869, and the time of exhibiting these articles was guilty of corrupt practices and misdemeanors in said office of Governor.

**SPECIFICATION 1st.** The said David Butler, Governor, as aforesaid, did, in the month of April, 1870, sell to one Andrew J. Cropsey, lots seven, eight, nine, ten, eleven and twelve, in block one hundred and fifty-one, in Lincoln, Nebraska, the title to which said lots, at the time of such sale, was in the State of Nebraska, at private sale, causing the title deeds therefor to be executed in the name of the State, for the sum of two thousand four hundred dollars, a portion of which said purchase money, he, the said David Butler, appropriated to his own use and benefit; whereby, the said David Butler, Governor of the State of Nebraska, did then and there commit, and was guilty of a misdemeanor in office.

And the House of Representatives by protestation, saving to themselves the liberty of exhibiting at any time hereafter, any further articles or other accusations or impeachment against the said David Butler, Governor of the State of Nebraska, and also of replying to his answers which he shall make, unto the articles herein preferred against him, and of offering proof to the same, and every part thereof, and to all and every other article, accusation, or impeachment, which shall be exhibited by them as the case shall require. Do demand, that the said David Butler may be put to answer the misdemeanors in office, herein charged against him, and that such proceedings, examinations, trials and judgments, may be thereupon had and given, as may be agreeable to law and justice.

The PRESIDENT. The Secretary will call the roll.

The SECRETARY. Mr. Brown.

Senator Brown rose in his seat.

The PRESIDENT. Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty or not guilty of misdemeanor in office, as charged in this article?

Senator BROWN. "NOT GUILTY!"

[The same order was followed as the name of each Senator was called.]



The SECRETARY. Those Senators voting "Guilty" are Messrs. Metz, Kennedy, Sheldon, Thomas, Tennant, and Mr. President.

Those voting "Not Guilty" are Messrs. Brown, Cropsey, Gerrard, Hawke, Hilton, and Tucker.

The PRESIDENT. *Six* Senators have voted "Guilty," and *six* "Not Guilty."

The PRESIDENT. On the first article *nine* Senators have pronounced "Guilty," and *three* "Not Guilty."

On the second article *five* Senators have pronounced "Guilty," and *seven* "Not Guilty."

On the third article *five* Senators have pronounced "Guilty," and *seven* "Not Guilty."

On the fourth article *one* Senator has pronounced "Guilty," and *eleven* "Not Guilty."

On the fifth article *no* Senator has pronounced "Guilty," and *twelve* "Not Guilty."

On the sixth article *five* Senators have pronounced "Guilty," and *seven* "Not Guilty."

On the seventh article *two* Senators have pronounced "Guilty," and *ten* "Not Guilty."

On the eight article *no* Senator has pronounced "Guilty," and *twelve* "Not Guilty."

On the ninth article *no* Senator has pronounced "Guilty," and *twelve* "Not Guilty."

On the tenth article *no* Senator has pronounced "Guilty," and *twelve* "Not Guilty."

On the eleventh article *six* Senators have pronounced "Guilty," and *six* "Not Guilty."

Hence, it appears that there is a constitutional majority of votes finding David Butler, Governor of the State of Nebraska, guilty on article one. It

therefore becomes my duty to declare that David Butler stands convicted of, and upon article one, exhibited by the House of Representatives, of the State of Nebraska against him.

Senator GERRARD. Mr. President: I desire to offer an order.

The PRESIDENT. Senator Gerrard offers the following order :

"In the matter of the Impeachment of David Butler, Governor of the State of Nebraska."

And now, on this 2d day of June, A. D. 1871, this case coming on to be heard before the Senate of the State of Nebraska, sitting as a Court of Impeachment for the trial of the same, and the evidence and arguments having been heard, as well upon the part of the Respondent as upon the part of the State, upon the articles of impeachment exhibited by the House of Representatives against the said David Butler, Governor of the State of Nebraska, the said articles having been submitted severally for the consideration of the Court, and two-thirds of the Senators having concurred in the conviction of said David Butler, Governor of the State of Nebraska, of misdemeanors in his said office, as charged in article 1st of said articles of impeachment. It is therefore ordered and adjudged by the Senate of the State of Nebraska, so sitting as a court of impeachment, for the trial of David Butler, Governor of the State of Nebraska, that the said David Butler is guilty of misdemeanors in office as charged in said article 1st, and it is further ordered and decreed that the said David Butler, Governor aforesaid, be, and is hereby removed from the office of Governor of the State of Nebraska, which he now holds. And it is further ordered, that a copy of this judgement and order duly certified by the President of the Senate of the State of Nebraska, shall be filed with the Secretary of said State of Nebraska.

The PRESIDENT. The question is upon the adoption of this order as submitted by the gentleman from Platte. Those Senators in favor of the adoption of the order will, as their

names are called, answer "aye," and those opposed will answer "nay." The Secretary will call the roll.

When Senator Sheldon's name was called he arose and said:—"I desire to explain my vote, as I understand that order only removes from office, and if it pass that will be the extent of the judgment. If the Governor is a suitable person to hold office hereafter I do not see why we should remove him at the present time, and for that reason I shall vote nay."

The SECRETARY. Those voting in the affirmative are Messrs. Brown, Cropsey, Gerrard, Hawke, Hilton, Metz, Kennedy, Thomas, Tucker, Tennant, and Mr. President. Senator Sheldon voting in the negative.

The PRESIDENT. Eleven Senators having voted in favor of the

adoption of the order and one against, the order is adopted and will stand as the judgment of the court.

Senator GERRARD. Mr. President: I now move that the Senate, sitting as a Court of Impeachment for the trial of David Butler, Governor of the State of Nebraska, do now adjourn *sine die*.

The PRESIDENT. It is moved that the Senate, sitting as a Court of Impeachment, for the trial of David Butler, Governor of the State of Nebraska, do now adjourn *sine die*. As many as are in favor of the motion will answer "aye," opposed "nay."

The motion is carried, and the Senate, sitting as a Court of Impeachment for the trial of David Butler, Governor of the State of Nebraska, stands adjourned *sine die*.



# FILED ARGUMENT.

OF MR. TUCKER.

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## Opinion of Senator Tucker.

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Although much time has been spent by the Court in this trial, and a cloud of witnesses produced and sworn, the material testimony might be compressed into a very few pages. I venture to assert, that such a mass of irrelevant and incompetent testimony was never before admitted in any cause, civil or criminal, since tribunals were first established among men. It was insisted by the prosecution that the Court had a right to all the testimony, and would, of course, reject that which turned out to be irrelevant; but, has the Court or the prosecution a right to the admission of any testimony, not bearing upon the issue, which the prosecution have seen fit to make for themselves? I think not. The well established rules which govern the admission of testimony, have not been so established to aid the guilty to escape, or to thwart the ends of justice; but on the contrary, these rules contain the concentrated wisdom of successions of ages, and have been adopted after long experience, repeated discussions, and frequent tests, as best calculated to elicit the truth. It does not become us in this day and age to lay these rules aside. Irrelevant testimony must always do harm, and even more especially in a case like this than in an ordinary criminal case. Take the testimony of R. D. Silver for an example. Mr. S. was produced and sworn for the purpose of proving certain corrupt contracts of the respondent, to which the witness was a party. No such contracts are even alluded to in the

articles; not the slightest notice or opportunity was given for defense. Yet it is one of the plainest principles of common sense as well as of law, that the accused shall not be called upon to answer, and for a stronger reason shall not be prejudiced by the admission of anything not charged against him. I do not pretend to say that anybody believed Mr. Silver, notwithstanding the starblind character of his narrative. Forgery and perjury are not the most promising gratifications to entitle a witness to belief. But this was merely accidental. Even dishonest witnesses are not generally so lost to all moral sense as to impeach themselves.

But I will leave this discussion and in my remarks shall confine myself to what I regard as material and relevant testimony in the case, and to that only, as it bears upon what is confessedly the only charge which there is sufficient evidence to bring to our notice, namely, the first specification under the first article, which reads as follows:

**SPECIFICATION 1st.** That having said sum of \$16,881.26 under his control and subject to his order, he, the said David Butler, Governor, as aforesaid, did corruptly and unlawfully neglect, and refuse to pay the same into the Treasury of the State of Nebraska; and from the time said money was under his control and subject to his order, to the time of exhibiting these articles, has so neglected and refused to pay the same into said Treasury."

There is some testimony, I admit, which tends to prove all, but the gist

of this charge. There is some testimony which goes to show, that having this money under his control he neglected to pay it over to the State Treasury which, unexplained would amount, under the circumstances to a refusal in law, but there is no testimony which tends, in the least, to prove that this neglect was fraudulent or corrupt, which is the very thing to be proved, but of which there is not a single fact shown, to raise even a presumption.

Mr. Sweet, the State Treasurer at the time of this transaction, testifies that the first time he ever had his attention called to this fund being due the State, was during the extra session in 1870,—nearly a year after this money was collected; and that he afterward had conversations with the respondent in which respondent stated that he had loaned ten thousand dollars of the money to a friend in Pawnee county and was obliged to take lands for it, and could not pay it over, and that he, the respondent, desired to secure the payment of the money by mortgage, which the Auditor, demanding that the money should be paid into the Treasury, refused to allow.

If this story be true, is it not rather strange, that this Pawnee county friend cannot be traced any farther by all the testimony produced at the trial. Mr. Sweet's testimony cannot possibly be reconciled with Mr. Church's. One or the other must be false. Mr. Sweet's testimony is vague, indefinite, uncertain and unsatisfactory; he remembers no dates and complains of a defective memory. Mr. Church's testimony is certain and definite. What he says he says positively. He is clear about date and minute in details. He was a member of the Legislature during the extra session of 1870; was a member of the Investigating Committee; the Auditor's report failed to show the "\$17,000"—as it was called; Mr. Church demanded of Mr. Sweet an explanation and that explanation as first given, was very minute, particular and satisfactory. When questioned again, Mr. Sweet knew nothing about the money, and went back on all that he had previously said. But if the testimony of Mr. Church is to have

any credit, unless his story is manufactured out of whole cloth, Mr. Sweet did know very much about the money; he knew the exact amount to a cent, and turned to his books to find it. Mr. Hathaway's testimony strongly corroborates Mr. Church's and so does Mr. Seymour's and many other witnesses. It is clear that Mr. Sweet's statements before the Court cannot be reconciled with his statements out of Court upon the same matter, but are totally contradictory. In no particular can they be reconciled. Mr. Sweet does not pretend to reconcile them. He admits one of them repeatedly, persistently, and deliberately made, to be false. The same objection may be urged with even a stronger force against Mr. Brock's testimony. Mr. Brock was called to prove that he had no knowledge of the source from which this money was derived, that he collected it for the respondent under an impression derived from the respondent, that it belonged to the respondent, personally and not in his official capacity. Mr. Brock's testimony is not only flatly contradicted by testimony which shows that he did know the nature of this fund, and by the circumstance that he was deputy State Treasurer at the time, but he too swears that he has made statements, repeated, solemn, deliberate, public, official, to the contrary, in which he says there was no word of truth, and which were intended to deceive. Is a man to be convicted upon the testimony of liars self-doomed? Which of their statements is to be taken as true? are they to be believed at all? Is any weight whatever to be given to their testimony, corroborated by no attending circumstances, and given under the pressure of a strong public sentiment, and the bias of self-interest? It shocks the common sense of mankind to say so. No jury of twelve men would consider such testimony for a moment. Moreover, the double character which Mr. Brock assumes, of Banker and Deputy State Treasurer, shifting so ingeniously and artfully from one to the other, in my opinion stamps his whole testimony with strong suspicion. Another thing to be taken into consideration is the public notoriety of the whole transaction. The fact that it was published in the

newspapers, and discussed in the political campaign. Nothing has been proved here which was not notorious before, distinctly and openly confessed and avowed, in public and private. This fact, if material for no other purpose, certainly negatives and disproves any notion of fraud and corruption.

I have thus far confined myself to the discussion of the facts in the case. I am clearly of the opinion that they do not prove the charge made. I am still more clearly of the opinion that if the charge was fully and conclusively proved, this Court has no jurisdiction to pronounce conviction. An argument from convenience, an argument that otherwise, great public offenders might go unpunished by concealing their misdeeds to the end of their term of office, is entitled to no consideration whatever. We sit here not to make but to administer the law; we are a body of strict powers; we have what powers a fair construction of the Constitution gives us, and no more. If the Constitution gives us too little, it should be changed, not disregarded. I am confident of proving that the construction of the Constitution which is contended for by some—namely—that it gives to this Court jurisdiction to try offences committed in a previous term of office, involves a practice absurd-

ity. But I shall forbear, and confine myself to the argument used upon the trial of this cause from the analogy of the English law. Such an analogy I regard as very dangerous. It is well known that what Parliament enacts is law. There are no Constitutional limitations upon its powers, consequently, whatever powers it claims, it has. In the origin of impeachment trials, the executive officers of the Commonwealth were appointees of the Sovereign and held during his will and pleasure, which might, if they were subservient and unscrupulous extend to life; there was no such thing as a fixed term of office, which expired by its own limitation, when the people could exercise their pleasure about re-electing the incumbent. There was no such thing as an election, and with such essential differences between the two forms of government, there can be no analogy. The powers assumed by the English Commons were a necessity. They lacked two means of protection which we possess, namely, a Constitution and fixed terms of office. The power to impeach, as here advocated, is not a necessity, we do not need it, and if we did, it would make no difference, for the Constitution does not give it.

GEORGE P. TUCKER.



# FILED ARGUMENT.

OF MR. WAKELEY.

[NOTE.—This argument is presented under the agreement of counsel at the close of the last day's proceedings. It is written out from the notes and material, prepared, more fully than I am accustomed to prepare them, as the basis of an oral argument which I was expected to make. It is, in all respects, substantially what I intend to say.

E. WAKELEY.]

## Argument of Mr. Wakeley Submitted by Agreement.

MR. PRESIDENT AND SENATORS:—You know what my professional connection with this cause has been. I was absent, from necessity, during the former portion of the trial, and during the delivery of the arguments of counsel. Your order, afterwards made, that the cause be continued, and that new proofs might be made, was the occasion of my being here to take part in the proceedings of the last three days.

I presume, therefore, I shall not be expected to sum up evidence, or to reply to arguments which I did not hear. All this has been done, and been well and fully done by others.

I think, if there remains any professional duty, which I can usefully or properly do, it is only to state the result of the evidence which I find reported, and of that which has just been given, I will make no attempt to analyze, or to review it. I will endeavor, in the short time I shall occupy, only to present some general views of the cause for your fair and just consideration.

What, then, Mr. President and Senators, do these proofs now before you establish?

They show, in few words, that the respondent has been faithless to his high trust; that he has dishonored his exalted station; that he has abused and betrayed the confidence reposed in him.

In the chief civil office of his State, at the beginning, and when the foundations of its policy were to be fixed, he had great and rare opportunities. If he could not have attained to eminence, or distinction as a statesman, he could have achieved a good and lasting fame. He could, at least, have served with humble fidelity the young State which had so greatly honored him. He might have used the vast power, and unusual privileges intrusted to him to promote its welfare, and advance its interests. No Governor of any infant State, has had larger means for good to employ.

How has he turned these opportunities to account? With such incentives to influence and inspire him, what has been his record? Let these accumulated proofs answer. They show that his whole official career has been marked by disregard of public duty. They show that private advantage, aggrandizement and extortion, have been the chief ends of his administration, and lawlessness and corruption the chief means of attaining them.

Elected and sworn to execute the laws, he has habitually and constantly violated them. Through his whole incumbency of office he has exhibited



a hardened disregard of legal and constitutional restraint. For this, he has never had the palliation which sometimes attends a defiance of law, or a usurpation of power. He has never transgressed the one, or abused the other, for a high or patriotic motive, but always for a base or sordid end.

In all this, his boldness and his audacity have been unsurpassed. He has scarcely sought to conceal his derelictions; but he has rebuked and defied the efforts of the people, and of their representatives to bring him to account for them. At last he is here to abide your judgment.

Coming to the special instances charged in the Articles, and amply proven, what do we find?

As Governor of the State he was specially empowered to receive, and deposit in its treasury, seventeen thousand dollars of its public funds; of monies solemnly dedicated to the holy purpose of educating its youth. Without law, without authority, without the shadow of right to warrant it, he boldly and corruptly clutched this sacred fund, and appropriated it to his own personal and private use.

Detected in this bold defiance of law—in this flagrant betrayal of trust—he attempted to excuse it by a false pretense, long afterwards devised, that he had loaned this money from the State. How utterly unsupported by the proofs is even this pretense! But, had the fact been true, such a loan as he pretended to have made, would have been no less a gross and palpable violation of law, than to have deposited it, as he did do, in the first instance, to his own credit, with his private bankers, to be checked out for his individual benefit.

Why talk of a loan? Where was the statute, where was the law, where was the authority, or the pretense of authority for loaning that money? Had he once placed it in the treasury of the State, was there not a solemn and binding law, in full force—a law signed and sanctioned by himself, as Governor—guarding that fund from all change or touch; commanding the treasurer to keep these identical monies in his custody, subject to the disposal and the inspection of the Legislature, and making it penal and punishable for the treasurer to pay them

out, or let them go from his hands except in strict pursuance of law?

Does the Governor of the State come here to tell you, that he not only advised and counseled the state treasurer to violate a solemn statute, but that he himself, whose constitutional duty, and constitutional oath were to see that the laws were faithfully executed, was the person who profited by the violation of the law, and received the money which the treasurer paid out in glaring defiance of it? Does he seek to escape conviction upon this article, which charges that he never placed the money in the treasury, by showing that he first put it in, and then aided, abetted, and was a party to a crime; and committed an impeachable offence in taking it out? Is that his only refuge? It is certainly his only answer, filed to this charge; and, if it be true, makes him both indictable and impeachable.

But, the answer is not true. The evidence utterly and overwhelmingly disproves it. Again, who made this loan? Who fixed the terms of it? What were its terms? Where was the evidence of it? What bond, what security, what writing evidenced it? What living witness knew of it? Had David Butler died, where, upon the face of the earth, was there a word of writing or a human being to prove even an unsecured debt against his estate? And, was there ever, among any people where law was known, a statute or an authority for a public officer to loan public money to himself, upon any terms or upon any security?

In reference to so plain, so manifest, so gross a violation of law, and of official obligation, surely there is not need—there is scarcely place for argument.

Being a candidate for re-election, he drew upon the personal friendship, and party fealty of the treasurer, and his deputy to sanction a false statement of the facts, and deceive the people. And now, confronted with the crushing proofs of its falsity; with the books and records; and the oaths of the very men who perverted the truth to save him—all sustaining this charge to its full extent, and in all its scope, he comes here unblushingly, and stakes his whole defense upon these statements of his friends and defenders, so

procured, and so made, in his own interest, to his political party, and to the people, to save him from defeat and disgrace.

As Governor of the State he was authorized to lease its Saline lands. He attempted to extort from Thomas F. Hall a bribe of \$5,000 as the price of his corrupt use of that power. The explanation of this, in his answer, is left without proof, and the charge stands fully and substantially sustained.

As President of the Board of Regents he had a vote, and an official influence in the election of its treasurer. Upon the undenied testimony—upon the express admissions of his answer—he received without rebuke, and considered without a suggestion of its impropriety, the scandalous offer of a bribe for his vote, and his influence in favor of Brock's appointment. That he did not use them to that end, does not prove that his sense of honor, or his regard for official purity was shocked. Other facts disclosed in the evidence are suggestive of the reason.

He was empowered to audit the account of the law officer of the State, for legal services. He falsely certified that there was due to C. S. Chase two thousand dollars on that account. That the certificate was untrue, and that the respondent knew it, is proven beyond doubt or question. Chase was not entitled to, nor did he claim that amount. The services had not been, and never were wholly rendered. The respondent's motive was to draw from the Treasury \$1,000 for his private, and personal use. He did so use it. He intended to keep it. And he restored it to the Treasury, only, when he found that he could not corrupt Chase to be a party to the fraud upon the State.

As a commissioner of public buildings, he made contracts not authorized by law—contracts exceeding the appropriations for meeting them, and paid an irresponsible contractor sums largely beyond the amount due; and, under the circumstances, more than suggesting a venal motive. For some of these acts he pleads the condonation of the people expressed in Joint Resolutions of the Legislature. These are signed by himself as Governor; and the history, and the archives of the

State show that they were obtained by unworthy appliances, and executive tamperings.

In a solemn and deliberate message to the Legislature of this State he declared, contrary to the truth, and knowing it to be so, that he had paid into the treasury the public monies received by him from the United States; adding to the shame of falsehood as a man, the outrage of purposely attempting to deceive a co-ordinate branch of the State Government.

As one of the custodians of the school fund—the sacred and inviolate legacy of the youth of this age, and of the future, he loaned it recklessly, and without the advice or concurrence of his co-commissioners, or of his law adviser under the statutes of the State.

Without the warrant of law, he caused seventy-five sections of the State lands to be patented to a foreign corporation. The offense was complete in the violation of the law. But it was the more glaring and conspicuous, because of being committed to aggrandize a corporation already endowed, and subsidized by government and private bounty, to an amount far beyond the cost of locating and building its Railroad. To excuse this wanton squandering of the public domain, he sets up the legal fiction that this corporation had been consolidated with that one to which the lands were granted, and was thereby entitled to them. It has been shown in argument, that there was no authorized or actual consolidation; and, if there had been, it is not shown that the right to the lands would have followed.

The issuing of the patents was unadvised, unwarranted, in disregard and to the enormous prejudice of the State, and its property rights.

Judge his motives leniently if you will; but remember that he was advised not to do the act—that he assured the auditor he would not do it—and that afterwards, without consultation, or responsible advice, or the concurrence or knowledge of his co-commissioners he issued the patents for this vast quantity of lands. Was his motive—could it have been pure?

He was one of the Commissioners to sell State Lots in Lincoln. As such he caused pretended sales to be made

to himself. He had the entries of the transactions made in pencil marks in loose memorandum books. He furnished the State no evidence of them. He paid no money. He executed no obligations. Long afterwards, he sold the lots, at large advances, for private gain and speculation; caused the deeds to be executed to his vendees; paying into the treasury only the purchase price according to the terms of the supposititious purchase.

Yonder stands your State University—the institution where the young men of Nebraska are to be educated, and fitted for your future statesmen.

The Governor of your State—the respondent at this bar, laid its very foundations on bribery and corruption.

What have you seen and heard in these closing two days of this trial? The delay of judgment sought by the respondent to break, or to soften his fall, has brought to light, and enabled us to unroll, here before you, that written contract wherein “David Butler, Governor of the State of Nebraska” boldly, unblushingly, with amazing recklessness stipulates for a bribe of \$10,000 for awarding to Silver & Son the contract to build this edifice wherein your sons and mine are to be taught the lessons of personal purity, of public probity and civic virtue! And, by two living witnesses upon this stand, we proved that he received \$5,000 of this price of corruption—and demanded \$10,000 more, upon some ingenious construction of this unprecedented “bond.”

Senators! there it is, upon your table, preserved for your inspection to-day, with David Butler's name upon it, as the closing evidence of his guilt. Your power to punish him is fixed, and limited. Even that you will not inflict willingly. No one here prosecutes in vengeance. No one would aggravate the penalty which must fall upon him if you shall convict him. But, Senators, no judgment you can pronounce; not the loss of office; not the deprivation of future honors would equal the lasting disgrace which must rest upon the name that will go down to history with these proceedings, appended to that record of official corruption.

In the face of this testimony—in the presence of this black and blasting

accusation, absolutely and overwhelmingly proven and established, who, here, or elsewhere, will or dare stand forth to deny that this respondent is guilty—and must bear the shame he has brought upon his character, and his name and upon the State that has cherished and promoted him?

These, Senators, are among the acts of lawlessness, of rapacity, and corruption, in proof before you. They extend over all the years of the respondent's official record. They are not evidences merely of isolated, or casual delinquencies. They pervade and characterize his whole public career. They establish not alone occasional deviations from official rectitude. They show an utter and radical want of official integrity, or virtue; and they carry with them, in their frequency, and in the audacity with which they were practiced, inherent evidence that they have not been the only lawless and corrupt acts of the respondent's administration. They are but a few—a very few of them—dragged into light by accident, and against accumulations of difficulty.

It remains only with you, Senators, to determine how you will deal with the perpetrator of these official crimes. You have heard the proofs; and in this long, this unprecedented interval between trial and judgment you have weighed them well. In your fresh contact with the people, you have been inspired, if you needed the inspiration, with a strengthened purpose to do your whole duty—to do it sternly—to do it unswervingly. You cannot afford to do otherwise. For your own reputations you must do this. For the just regard of those who shall come after you, you must do it. Remember, Senators, that these proofs, and the judgment you shall this day give upon them, will go down to the future together, for those who shall read them in all time hereafter, to scrutinize, and to rejudge.

The State of Nebraska cannot afford, that this constitutional tribunal shall acquit a high offender, convicted of undoubted official guilt. Still in her early statehood, she owes it to her people, and to those who shall inherit her institutions, to prove, now and here, that retribution awaits corruption in her high places of trust. Let

it not be recorded that any officer, high or low, in this land of written constitutions, and ordained law, is above or beyond their restraints.

Senators, when you went from this Capitol to your homes, a few weeks ago, there stood, on yonder eminence, the Asylum where the beneficence of your State cared for, and protected her insane. Since then, it has gone down in the flames of midnight, carrying from human sight, and human observation forever its blemishes and its defects. On its site, we hope there yet may rise a building whose firmer structure, and fairer proportions shall endure for generations.

So, by your consuming judgment upon this accumulated guilt, let these executive chambers be purified, as by fire, from their taint of pollution: and, henceforth, they shall be pervaded by the wholesome presence of official purity, and public virtue.

Moving appeals are made to you in behalf of the respondent. They laud his public enterprise. They speak of his service to the State. It is said of him that, here in Lincoln, he has founded a city. That, here, through his efforts, and his energy, your public buildings have been erected without cost to the people. Something might be said in qualification of all this. I forbear it. At such a time, it might be ungenerous. How much, or how little credit may be his due let us not discuss. Grant him all the praise. You can be just to him, while you are just to the State. Brutus exclaimed over the body of the great dead Cæsar—"As he was fortunate I rejoice at it; as he was valiant I honor him; but as he was ambitious I slew him."

So let this Senate say now of David Butler; "as he was fortunate we rejoice at it; as he was enterprising we honor him; but as he was corrupt we condemned him."

I make no appeal to you for vengeance upon this respondent. But, by all the obligations that bind you as men, and as Senators, you are impelled to give just and honest judgment in this cause. The chief ruler of your State has dishonored his high

place. His constitutional accusers have brought him to your bar for trial and for judgment. If, from any weakness or compassion; if, from any sentiment of personal friendship, or any political partiality; if, from anything save a sincere conviction of his innocence, or an honest doubt of his guilt, you shall acquit him, you will but implicate your State in his guilt, and compel it to bear the disgrace of his rule.

From all the wide prairies of Nebraska; from every town, and every valley in its borders, comes the voice of a wronged and betrayed people, demanding that you do your whole duty in this, the crisis of her early history; that you do it sternly; that you do it fearlessly.

Four years only, Nebraska has been a State. They have been years of misrule, and of malfeasance at her Capitol; years filled with disregard of law, and defiance of constitutional restraint, where the law and the constitution should have found their sworn defender; years filled with fraud, and wrong, with corruption, and rapacity on the part of her chief executive officer, tainting and disgracing his whole administration.

If, now, you shall say, by your judgment, that there is nothing wrong in all this; nothing that should be condemned; nothing that should be punished, let the State go one step further. Let her write over the portals of this State House in words legible to all who shall enter it hereafter, IMMUNITY TO CORRUPTION GUARANTIED HERE!

But, you will not do this. You will give just and righteous judgment. Here, in the Capitol of Nebraska, you will say to all her people, that, under their Constitution, there is no place so exalted that it lifts the incumbent above accountability. You will say, in language that will be heeded as long as your State shall endure, that whosoever, in times to come, shall cross these thresholds, to enter the public service, must come with clean hands, and his passwords must be: INTEGRITY, FIDELITY, OBEDIENCE TO THE LAWS.



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SENATE PROCEEDINGS

IN THE

IMPEACHMENT TRIAL.

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PART V.

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## SENATE PROCEEDINGS.

### PROCEEDINGS OF THE SENATE PRELIMINARY TO THE TRIAL OF DAVID BUTLER, GOVERNOR OF THE STATE OF NEBRASKA UPON ARTICLES OF IMPEACHMENT.

WEDNESDAY, March 1, 1871.

Messrs. Summerlad and Quimby, a Committee from the House, appeared and informed the Senate as follows :

Mr. PRESIDENT:—In obedience to the order of the House of Representatives we appear before you, and in the name of the House of Representatives and of all the people of the State of Nebraska, we do impeach David Butler, Governor, of the State of Nebraska, of misdemeanors in office, and we further inform the Senate, that the House of Representatives will, without delay, exhibit particular articles of impeachment against him and make good the same, and in their name we demand that the Senate take order for the appearance of the said David Butler to answer said impeachment.

H. W. SUMMERLAD,

Chairman.

Mr. Hascall offered the following resolution :

*Resolved*, That the a committee of three be appointed by the President to inform the Secretary of State that the House of Representatives have impeached His Excellency, the Governor, David Butler, of misdemeanor in office, and communicated its action to this body, and to request the said Secretary to immediately enter upon the discharge of the duties of the office of Governor of the State of Nebraska, as the said impeachment by the House

disqualifies the said David Butler from discharging the duties of the office of Governor, and by the State Constitution the said duties devolve upon the Secretary of State during such disability.

On motion the resolution was made a special order for 2 o'clock P. M.

The hour of 2 o'clock having arrived, the Senate resolved itself into the Committee of the Whole to take into consideration the special order, with Mr. Gerrard in the chair.

After sometime spent therein the Committee arose and by its chairman, reported that they had made some progress and asked leave to sit again.

On motion the report was adopted.

Mr. Gerrard offered the following :

*Resolved*, That the message of the House of Representatives relating to the impeachment of David Butler, Governor of the State of Nebraska, be referred to a committee of three to be selected by the chair, to consider the same and report thereon.

On motion the resolution was adopted, and

Messrs. Gerrard, Hawke and Hascall were appointed such committee.

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MONDAY, March 6, 1871.

Roll call. Present—Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Sheldon, Thomas, Tucker, Tennant, and Mr. President.

Absent—Mr. Kennedy.



**THE PEOPLE OF THE STATE OF NEBRASKA VERSUS DAVID BUTLER, GOVERNOR.**

The Senate sitting for the trial of David Butler, Governor of the State of Nebraska upon articles of impeachment exhibited against him by the House of Representatives.

By the direction of the President of the Senate the following oath was administered to him by Hon. Judge Dundy :

I do solemnly swear that in all things appertaining to the trial of the impeachment of David Butler, Governor of the State of Nebraska, now pending, I will do impartial justice according to the law and evidence, so help me God.

The President then administered the same oath to the following Senators separately as their names were called by the Secretary, to-wit :

Messrs. Brown, Cropsey, Gerrard, Hawke, Hilton, Hascall, Metz, Sheldon, Thomas, Tucker, and Tennant.

On motion of Mr. Gerrard it was

*Ordered*, That the Secretary of the Senate inform the House of Representatives that the Senate is in its chamber, and ready to proceed with the trial of David Butler, Governor of the State of Nebraska.

Mr. Gerrard offered the following resolution which was adopted :

*Resolved*, That the rules adopted by the Senate be the rules of procedure and practice in the Senate, sitting in the trial of the impeachment of David Butler, Governor of the State of Nebraska.

Mr. Gerrard moved the adoption of the following :

*Ordered*, That a summons do now be issued as required by the rules of procedure and practice in the Senate when sitting on the trial of impeachment of David Butler, Governor of the State of Nebraska, returnable on Tuesday, the 7th day of March, A. D. 1871, at 10 o'clock A. M.

The order was adopted and the summons was issued in due and proper form, returnable March 7, at 10 A. M.

On motion, the Senate sitting on the trial of the Governor upon articles of impeachment, adjourned until to-morrow morning, at 10 o'clock.

**TUESDAY, March 7, 1871.**

Roll call. Present—Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Sheldon, Thomas, Tucker, Tennant, and Mr. President.

The Sargeant-at-Arms having made proclamation.

The journal of the proceedings of the Senate, sitting for the trial of the Governor upon articles of impeachment of March 6th, was read and approved.

On motion of Mr. Gerrard, it was

*Ordered*, That the Secretary of the Senate inform the House of Representatives, that the Senate is in its chamber and ready to proceed on the trial of David Butler, Governor of the State of Nebraska, and that seats are provided for the accommodation of the members.

The Managers appointed to conduct the trial of the Governor upon articles of impeachment, exhibited against him by the House of Representatives, to-wit :

Messrs. Myers, Doom, Porter, Hudson, and Riordan, having entered the Senate chamber and taken seats assigned them.

The President directed the Secretary to read the return of the Sargeant-at-Arms on the writ of summons directed by the Senate to be issued to David Butler, Governor of the State of Nebraska, and the Secretary read the return of the Sargeant-at-Arms as follows :

“Received this writ on March 6, 1871, and at 4 o'clock P. M. of said day

served the same on the said David Butler, Governor of the State of Nebraska, by delivering to, and leaving with him, the said David Butler, Governor of the State of Nebraska, a certified copy of the same."

L. M. KLINE,  
Sergeant-at-Arms,  
of the Senate of the  
State of Nebraska.

The Secretary then administered the following oath to the Srrgeant-at-Arms:

"I, Lewis M. Kline, Sargeant-at Arms, of the Senate of the State of Nebraska, do swear that the return made and subscribed by me upon the process issued on the 6th day of March, 1871, by the Senate of the State of Nebraska, against David Butler, Governor of the State of Nebraska, is truly made, and that I have performed said service therein prescribed, so help me God."

L. M. KLINE.

"Sworn to before me, and subscribed in my presence this 7th day of March, A. D. 4871." C. H. WALKER,  
Secretary of Senate.

By direction of the President the Sargeant-at-Arms then made proclamation as follows:

"David Butler, Governor of the State of Nebraska! David Butler, Governor of the State of Nebraska! appear and answer to the articles of impeachment exhibited against you by the House of Representatives of Nebraska."

Whereupon, David Butler, Governor of the State of Nebraska, with his counsel, Clinton Briggs, John I. Redick, and T. M. Marquette, appeared at the bar of the Senate and took the seats assigned them on the right of the chair.

The President announced that the Senate was now ready to proceed with the trial of the Governor upon the articles of impeachment exhibited against him by the House of Representatives,

The President having informed the counsel of the Governor that the Senate was ready to receive from them his answer to the writ of summons.

Mr. Redick, in behalf of David Butler, the respondent, read the following paper which he handed in at the Secretary's desk:

IN THE MATTER OF THE IMPEACHMENT  
OF DAVID BUTLER, GOVERNOR OF  
NEBRASKA.

MR. PRESIDENT:—I, David Butler, Governor of the State of Nebraska, who have been summoned before this Honorable Court, sitting as a Court of Impeachment, do hereby enter my appearance by my counsel, Clinton Briggs, John I. Redick, and T. M. Marquette, who are hereby authorized to appear for me and conduct my defense.

DAVID BUTLER,  
Governor of Nebraska.

Mr. Redick asked until Thursday, March 9th, to plead or answer to the articles of impeachment.

The President stated the question before the Senate to be upon the motion of the counsel of the Governor, to be allowed two days to prepare and file his answer to the articles of impeachment exhibited against him by the House of Representatives, whereupon

Mr. Hascall submitted the following motion for consideration:

*Ordered*, That 10 o'clock A. M. on Thursday, March 9, 1871, be, and the same is hereby fixed as the time for the accused to plead or answer to the articles of impeachment in this case.

The question being put, it was determined in the affirmative, when

On motion of Mr. Hascall, the Senate, sitting for the trial of the Governor upon articles of impeachment, adjourned to Thursday, March 9, 1871, at 10 o'clock A. M.

THURSDAY, March 9, 1871.

At 10 o'clock A. M. the President called the Senate to order.

Present—Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Thomas, Tucker, Tennant, and Mr. President.

Absent—Messrs. Sheldon and Kennedy.

The Sargeant-at-Arms having made proclamation.

The Journal of the proceedings of the Senate, sitting for the trial of the Governor upon articles of impeachment of Tuesday, March 7, 1871, was read and approved.

On motion of Mr. Gerrard, it was

*Ordered*, That the Secretary of the Senate inform the House of Representatives that the Senate is in its chamber and ready to proceed on the trial of David Butler, Governor of the State of Nebraska, and that seats are provided for the accommodation of the members.

The Managers appointed to conduct the trial of the Governor of the State of Nebraska, upon articles of impeachment, exhibited against him by the House of Representatives, to-wit: Messrs. Myers, Doom, Hudson, Riordan, and Porter, entered the Senate chamber and took the seats assigned them.

The Governor with his counsel, Mr. Briggs, Mr. Redick, and Mr. Marquette, appeared at the bar of the Senate and took the seats assigned them.

The President of the Senate then asked the counsel of the Governor if they were ready to file answer to the articles of impeachment, exhibited against him by the House of Representatives, as required by the order of the Senate of the 7th of March instant.

The counsel of the Governor replied that they were now ready to make answer; thereupon the answer of the respondent to the articles of impeachment exhibited against him by the House of Representatives, was read by his counsel.

The reading of the answer of the respondent having been concluded.

The President of the Senate submitted the question to the Senate:

“Shall the answer of the respondent, as read by his counsel, be received and filed?”

The yeas and nays being taken, those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Thomas, Tucker, Tennant, and Mr. President—11.

None voting in the negative it was determined in the affirmative.

Mr. Myers on the part of the Managers submitted the following motion which was considered and agreed to:

*Ordered*, That the Managers have time to consult the House of Representatives on a replication, and that they be furnished with a copy of the answer of the respondent; and

*Ordered*, That the Secretary communicate to the House of Representatives an attested copy of the answer of the Governor to the articles of impeachment.

Mr. Gerrard submitted the following:

*Ordered*, That the Managers on the part of the House of Representatives in the trial of the impeachment of David Butler, Governor of the State of Nebraska, be required to file their replication to the answer of said David Butler, on Friday the 10th of March, 1871, at 10 o'clock A. M., that the trial of the impeachment of David Butler, Governor of the State of Nebraska, shall proceed on Monday, March 13, 1871, at 10 o'clock A. M., and shall continue from day to day till the same be completed unless otherwise ordered by the Senate.

The President of the Senate submitted the question to the Senate:

“Shall the resolution be adopted?”

Mr. Cropsey moved a division of the question, which was agreed to.

The question being:

“Shall the Managers in the trial of the impeachment of David Butler, Governor of the State of Nebraska, be required to file their replication to the answer of said David Butler, on Friday the 10th of March, 1871, at 10 o'clock A. M.?”

The yeas and nays being taken those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Thomas, Tucker, Tennant, and Mr. President—11.

None voting in the negative the question was decided in the affirmative.

The President of the Senate submitted the question :

“ Shall the trial of the impeachment of David Butler, Governor of the State of Nebraska, proceed on Monday, March 13, 1871, at 10 o'clock A. M., and continue from day to day till the same be completed unless otherwise ordered by the Senate?”

Mr. Hascall moved to amend by striking out Monday, March 13, 1871, at 10 o'clock A. M., and inserting Tuesday, March 14, 1871, at 3 o'clock P. M.

Mr. Hilton moved to amend the amendment by striking out Tuesday, March 14, 1871, at 3 o'clock P. M., and inserting Tuesday, March 14, 1871, at 10 o'clock A. M.

The question being on the amendment to the amendment.

Those voting in the affirmative were Messrs. Hilton and Tucker—2.

Those voting in the negative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Metz, Thomas, Tennant, and Mr. President—9.

The majority having voted in the negative the amendment to the amendment was not agreed to.

The question recurring on the amendment.

Those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Thomas, Tucker, Tennant, and Mr. President—11.

None voting in the negative, the amendment was agreed to.

The question recurring on the original motion as amended,

Those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Thomas, Tucker, Tennant, and Mr. President—11.

None voting in the negative the original motion as amended was agreed to.

Manager Myers informed the Senate that the House of Representatives had employed as counsel to the Managers of the trial of impeachment of David Butler, Governor, Messrs. Estabrook, Wakely, and Roberts.

Mr. Gerrard moved to amend Rule 23 adopted for the trial of impeachment of said David Butler, Governor of the State of Nebraska, by adding at the end of it the words “ or President of the Senate,” which was agreed to.

On motion, the Senate, sitting for the trial of the Governor upon articles of impeachment, adjourned at 12 M. to Tuesday, March 14, 1871.

FRIDAY, March 10, 1871.

Roll call. Present—Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Sheldon, Thomas, Tucker, Tennant, and Mr. President.

The Sargeant-at-Arms made proclamation.

The Managers appeared and took the seats assigned them.

The Governor appeared in person and took a seat within the bar.

The journal of the preceding day was read and approved.

Manager Myers presented and read the replication of the Managers to the answer of David Butler to the articles of impeachment which was ordered filed.

On motion of Mr. Gerrard, the Senate, sitting for the trial of the Governor upon articles of impeachment at 10 o'clock P. M., adjourned until Tuesday, March 14, 1871, at 3 o'clock P. M.

TUESDAY, March 14, 1871.

THE PEOPLE OF THE STATE OF NEBRASKA VERSUS DAVID BUTLER, GOVERNOR.

At three o'clock P. M., the President of the Senate resumed the chair, the Sargeant-at-Arms having made proper proclamation.

The roll was called. Present: Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas Tucker, Tenant, and Mr. President.

On motion of Mr. Hascall the oath was administered to Mr. Kennedy by the President.

The Managers appointed to conduct the trial of David Butler, Governor of the State of Nebraska, upon articles of impeachment, exhibited against him by the House of Representatives, to-wit: Mr. Myers, Mr. Doom, Mr. Porter, Mr. Riordan, and Mr. Hudson, entered the Senate chamber and took the seats provided for them.

The Governor with his counsel, Messrs. Briggs, Redick, and Marquette appeared at the bar of the Senate and took the seats assigned them.

The journal of proceedings of the Senate, sitting for the trial of the Governor, upon articles of impeachment of March 9th, 1871, was read and approved.

The President then informed the Managers that they could now proceed in the trial of the impeachment.

The Managers then requested that the witnesses on the part of the State be called which the Secretary proceeded to do.

Manager Porter on the part of the Managers, offered the following, to-wit:

And now comes the Managers on the part of the House of Representatives in the case of the impeachment

of David Butler, Governor of the State of Nebraska, and asks for an order of the Senate, that said trial be continued for sixty days from this date.

Pending which Mr. Briggs offered the following:

Mr. PRESIDENT: The Counsel for the respondent moves the Senate to take up and dispose of the exceptions contained in the answer relative to the respondent's acts as Commissioner before the trial proceeds on the merits.

CLINTON BRIGGS,  
JOHN I. REDICK,  
T. M. MARQUETTE.

Mr. Gerrard moved that the Senate do now retire for fifteen minutes to the Supreme Court room for the purpose of considering the motion submitted by the counsel for the respondent, and by the Managers on the part of the House of Representatives.

The yeas and nays being called, those voting in the affirmative, were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tenant, and Mr. President—13.

None voting in the negative the motion was agreed upon and the Senate retired.

Mr. Gerrard submitted the following order which was considered and agreed to:

*Ordered*, That the further consideration of the motion for continuance, submitted by the Managers be postponed, and that the Senate do first take up and decide the exceptions filed by the counsel for the respondent.

Those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker Tenant, and Mr. President—13.

None voting in the negative.

On motion of Mr. Gerrard, the Senate returned to its chamber, and the President announced that the Senate had adopted the following order:

*Ordered*, That the further consideration of the motion for a continuance, submitted by the Managers be postponed, and that the Senate do first take up and decide the exceptions filed by the counsel for the respondent.

On motion of Mr. Tennant, the Senate, sitting for the trial of the Governor upon articles of impeachment, adjourn at 5 P. M. to Wednesday, 10 A. M.

WEDNESDAY, March 15, 1871.

At 10 A. M. the President resumed his chair, and

The Sargeant-at-Arms having made proclamation.

Roll called. Senators all present.

The Managers appointed to conduct the trial of the Governor of the State of Nebraska, upon articles of impeachment, exhibited against him by the House of Representatives, to-wit: Mr. Myers, Mr. Doom, Mr. Porter, and Mr. Hudson entered the Senate chamber and took seats assigned them.

The Governor with his counsel, Messrs. Briggs, Redick, and Marquette appeared at the bar of the Senate and took seats provided for them.

The journal of the proceedings of the Senate, sitting for the trial of the Governor, upon articles of impeachment of yesterday was read.

Mr. Estabrook, counsel for the Managers, offered the following:

*Resolved*, That this Court, on the trial of impeachment now pending, have jurisdiction to inquire into offenses charged to have been committed, as well during the former terms of office of David Butler, Governor of the State of Nebraska, as into offences charged to have been committed during his present term of his said office.

*Resolved*, That the Senate, sitting for the trial of the impeachment of David Butler, Governor of the State of Nebraska, will receive such testimony as may be offered, touching the charges

of misdemeanors in office, while acting as commissioner under and by virtue of "An Act to provide for the sale of the unsold lots, and blocks on the town site of Lincoln, and for the location and erection of a State University and Agricultural College, and State Lunatic Assylum, approved February 15, 1869, as they are set forth in the articles and specifications, exhibited against him before this body.

Mr. Hascall moved that the Senate do now retire for ten minutes, for the purpose of considering the motion submitted by the counsel on the part of the Managers.

The yeas and nays being called, those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, and Mr. President—13.

None voting in the negative.

The Senate retired to the Supreme Court room, when Mr. Hascall rose to a point of order, that the resolutions were out of order as the Senate having decided yesterday to hear the arguments on the exceptions. The point of order was declared to be well taken.

Mr. Hascall, submitted the following:

*Ordered*, That the parties proceed to argue the exceptions in the case as ordered upon yesterday, and that the counsel for the respondent have the opening and the closing.

Mr. Gerrard offered the following as an amendment:

*Ordered*, That the counsel for defendant have the opening and the closing on the first three exceptions, and the Managers have the opening and the closing on the last exception, and that the several exceptions be argued and decided separately in the order in which they are filed.

The question being on the amendment, those voting in the affirmative were Messrs. Brown, Gerrard, Tucker, and Tennant—4.

Those voting in the negative were Messrs. Cropsey, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, and Mr. President—9.

The majority having voted in the negative the amendment was not agreed to.

The question recurring in the original motion, those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Thomas, Tucker, Tenant, and Mr. President—12.

Mr. Sheldon voted in the negative—1.

The majority having voted in the affirmative the motion was agreed to.

On motion of Mr. Tucker, the Senate returned to its chamber and the President announced that the Senate had adopted the following order, to-wit:

*Ordered*, That the parties proceed to argue the exceptions in the case as ordered upon yesterday, and that the counsel for the respondent have the opening and the closing.

On motion of Mr. Hascall, the Senate sitting for the trial of the Governor, upon articles of impeachment took a recess until 2 P. M.

#### AFTER RECESS.

At two o'clock P. M., the President of the Senate resumed the chair and announced that the Senate sitting for the trial of the Governor upon articles of impeachment, was ready to proceed with the trial.

Mr. Hascall moved that in the argument of the exceptions the counsel and Managers have such time as they may desire, necessary, but not to exceed one and a half hours on each side.

Mr. Tucker moved to amend by extending the time to three hours for each side.

The question being in the amendment, those voting in the affirmative

were Messrs. Brown, Cropsey, Gerrard, Hawke, Hilton, Thomas, Tucker, and Mr. President—8.

Those voting in the negative were Messrs. Hascall, Metz, Kennedy, and Sheldon—4.

The majority having voted in the affirmative, the amendment was agreed to.

The question recurring on the motion as amended, those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Sheldon, Thomas, Tucker, and Mr. President.

Mr. Kennedy voting in the negative.

The majority having voted in the affirmative the motion as amended was agreed to.

The President then informed the counsel for the respondent that they could now proceed with their arguments.

Thereupon, Mr. Briggs, on the part of the counsel for the respondent addressed the Senate in support of the exceptions to the articles of impeachment exhibited by the House of Representatives against the Governor; concluding his argument at 3:25 P. M.

At 3:30 P. M. Manager Porter, on the part of the Managers addressed the Senate in opposition to the exceptions of the respondent to the articles of impeachment exhibited by the House of Representatives, and concluded his argument at 3:50 P. M., when

Mr. Doom on the part of the Managers also addressed the Senate in opposition to the respondent, closing at 4:15 P. M., when

Mr. Marquette on the part of the respondent, addressed the Senate in support of the exceptions to the articles of impeachment exhibited by the House of Representatives against the Governor, and concluded his argument at 5:20 P. M.

On motion of Mr. Tucker, the Senate sitting for the trial of the Governor upon articles of impeachment, at 5:20 P. M., adjourned till 10 A. M., Thursday.

THURSDAY, March 16, 1871.

At 10 o'clock A. M. the President resumed the chair, and announced that the Senate was ready to proceed with the trial of the Governor upon articles of impeachment.

The Sergeant-at-Arms having made proper proclamation.

The Managers appointed to conduct the trial of the Governor upon articles of impeachment, exhibited against him by the House of Representatives, to-wit: Mr. Myers, Mr. Doom, Mr. Hudson, Mr. Porter, with their counsel, Mr. Estabrook and Mr. Roberts, entered the Senate chamber and took the seats assigned them.

The journal of the proceedings of the Senate sitting for the trial of the Governor upon articles of impeachment of yesterday, was read and approved.

The President then administered the following oath to the reporters, J. W. Howard, John T. Bell, John Hall and Daniel Brown, to-wit: You do solemnly swear that you will truly and correctly report the proceedings in the trial of the impeachment of David Butler, Governor of the State of Nebraska, to the best of your ability, so help your God.

Mr. Estabrook, on the part of the Managers, commenced at 10:15 A. M. to address the Senate in opposition to the exceptions of the respondent to the articles of impeachment exhibited by the House of Representatives.

At 12 M., Mr. Gerrard moved that the Senate sitting for the trial of the Governor upon articles of impeachment take a recess until 3 P. M.

Mr. Hascall moved to amend by striking out 3 P. M. and inserting 2:15 P. M.

Which was agreed to, and the motion as amended was agreed to, and the Senate sitting for the trial of the Governor upon articles of impeachment took a recess until 2:15 P. M.

AFTER RECESS.

At 2:15 P. M. the Senate resumed the trial of the Governor upon articles of impeachment.

The Managers, with their counsel, the Governor, with his counsel, and the Senators, all present.

Mr. Estabrook resumed his argument in opposition to the exceptions of the respondent, concluding at 2:50 P. M., when Mr. Redick, on the part of the respondent addressed the Senate in support of the exceptions to the articles of impeachment, closing at 3:40 P. M., when

Mr. Gerrard moved that the Senate retire to take into consideration the matter of the exceptions submitted to them by the respondent and Managers.

The yeas and nays being called,

Those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, and Mr. President—13.

None voting in the negative.

The motion was agreed to, and the Senate retired to the Supreme Court room.

Mr. Brown offered the following motion:

*Ordered.* That the exception last mentioned in respondent's answer, whereby respondent submits whether he shall be held to answer any of said articles or specifications because he insists that he ought not to be held to answer the same on account of the acts, doings and omissions complained



of being alleged to have been committed or omitted prior to the commencement of his present term of office of Governor, be and the same is hereby overruled. After debate

The yeas and nays were called.

Those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, and Mr. President—13.

None voting in the negative.

The motion was agreed to.

Mr. Hascall submitted the following motion for consideration:

*Ordered*, That all the remaining exceptions filed by the respondent in this case, and contained in the respondent's answer, herein be, and the same are hereby overruled.

Mr. Gerrard offered the following as an amendment:

*Ordered*, That said exceptions are sustained, so far as the same relate to acts done as commissioner to sell lots and lands in Lincoln, and erecting a Lunatic Asylum and State University.

The Senate proceeded to consider the said amendment, and on the question to agree thereto.

The yeas and nays were called, and those voting in the affirmative were Messrs. Gerrard, Hilton, Tucker, Tennant, and Mr. President—5.

Those voting in the negative were Messrs. Brown, Cropsey, Hawke, Hascall, Metz, Kennedy, Sheldon and Thomas—8.

The majority having voted in the negative, it was determined in the negative.

The question recurring in the original motion of Mr. Hascall,

Those voting in the affirmative were Messrs. Brown, Cropsey, Hawke, Hascall, Metz, Kennedy, Sheldon and Thomas—8.

Those voting in the negative were Messrs. Gerrard, Hilton, Tucker, Tennant and Mr. President—5.

The majority having voted in the affirmative, the motion was agreed to.

On motion of Mr. Tucker, the Senate returned to its chamber, when, on motion of Mr. Hawke, the Senate sitting for the trial of the Governor upon articles of impeachment, at 6:45 P. M., adjourned.

FRIDAY, March 17, 1871.

The President resumed the chair pursuant to adjournment.

The Sergeant-at-Arms having made proper proclamation.

The President announced that the Senate was ready to proceed with the trial of the Governor upon articles of impeachment, when the roll was called. Senators all present.

The managers appointed to conduct the trial of the Governor upon articles of impeachment exhibited against him by the House of Representatives, to-wit: Messrs. Doom, Myers, Hudson, Riordan and Porter, with their counsel, Messrs. Estabrook and Roberts, entered the Senate chamber, and took the seats assigned them.

The Governor with his counsel appeared at the bar of the Senate, and took the seats assigned them.

The journal of the proceedings of the Senate, sitting for the trial of the Governor upon articles of impeachment, of yesterday, was read and approved.

The President announced that the Senate had considered the questions before it at the time of retiring to their conference chambers, and had adopted the following order:

*Ordered*, That the exceptions last mentioned in respondent's answer, whereby respondent submits whether he shall be held to answer any of the said articles or specifications, because he insists that he ought not to be held to answer the same on account of the acts, doings and omissions complained

of, being alleged to have been committed or omitted prior to the commencement of his present term of office of Governor, be and the same is hereby overruled. Also

*Ordered:* That all of the remaining exceptions filed by the respondent in this case, and contained in the respondent's answer herein, be and the same is hereby overruled.

The managers requested the Secretary of the Senate to call the names of witnesses for whom summons had been issued on the part of the people, which was done.

The managers requested the Secretary to read the return of the subpoenas, which was done.

Mr. Porter, on part of the managers, then asked for a continuance of the trial for sixty days, whereupon

Mr. Thomas submitted the following motion, which was considered and agreed to:

*Ordered,* That if the managers desire to apply for a continuance, they do so in the manner prescribed by law for application for continuance in courts of record.

The yeas and nays being called for, those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant and Mr. President—13.

None voting in the negative, the motion was determined in the affirmative.

Mr. Gerrard, at 11 A.M., moved that the Senate, sitting for the trial of the Governor upon articles of impeachment, take a recess until 2 P. M., which was agreed to, and the Senate so sitting took a recess until 2 P. M.

#### AFTER RECESS.

The Senate resumed the trial of David Butler, Governor, upon articles of impeachment.

The managers, with their counsel, the Governor, with his counsel, and the Senators, all present.

The manager filed affidavits in support of the motion for an order to adjourn the further hearing of this case sixty days from this date.

After debate by Messrs. Estabrook and Myers, on the part of the managers, and Messrs. Marquette and Redick on the part of the respondent,

Mr. Thomas moved that the Senate retire to take into consideration the matter of adjourning the further hearing of this case sixty days from this date.

Those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, and Mr. President—13.

None voting in the negative.

The motion was decided in the affirmative, and the Senate retired.

Mr. Thomas submitted the following motion for consideration:

*Ordered,* That the application for a continuance, filed by the managers, be, and the same is hereby overruled.

After debate, the yeas and nays being called, those voting in the affirmative were Messrs. Brown, Cropsey, Hawke, Hascall, Hilton, Kennedy, Sheldon, Thomas, Tennant, and Mr. President—10.

Those voting in the negative were Gerrard, Metz, Tucker—3.

The majority having voted in the affirmative, the motion was agreed to.

On motion, the Senate returned to its chamber, when the President announced that the Senate had considered the questions before it at the time of retiring to their conference chamber, and had adopted the following order, to-wit:

*Ordered,* That the application filed by the managers be, and the same is hereby overruled.

On motion of Mr. Tennant, the Senate, sitting for the trial of the Governor upon articles of impeachment, at 3:30 o'clock, adjourned until 9 o'clock A. M., March 18, 1871.

—————  
SATURDAY, March 18, 1871.

At 9 o'clock A. M., the President resumed the chair pursuant to adjournment.

The Sargeant-at-Arms having made proper proclamation.

The roll was called. Present—Messrs. Brown, Cropsey, Hawke, Hascall, Metz, Sheldon, Thomas, Tucker, Tennant, and Mr. President.

Absent—Gerrard and Kennedy.

The Governor with his counsel and the Managers with their counsel entered the Senate chamber and took the seats assigned them, when

The journal of the proceedings of the Senate, sitting for the trial of the Governor upon articles of impeachment of yesterday, was read and approved.

The President then informed the Managers that they could now proceed with the trial of the impeachment, whereupon

Mr. Myers, on the part of the Managers, at 9:55 A. M., commenced to address the Senate in support of the articles of impeachment exhibited by the House of Representatives against the Governor, concluding at 10:40 A. M.

Mr. Doom requested the Secretary to call the list of witnesses on the part of the people, which he proceeded to do, when

Mr. Doom, on the part of the Managers announced that the Managers were ready to proceed with the testimony to make good the articles of impeachment exhibited by the House of Representatives against David Butler, Governor.

Mr. Estabrook, counsel for the Managers then offered the following documentary evidence, which he read and laid upon the desk of the Secretary.

First—A message from David Butler to the House of Representatives relative to the collection of the five per cent. fund, and also the admission contained in the answer of the collection of the five per cent. fund.

James Sweet, a witness on the part of the people of the State of Nebraska, was then called, and being duly sworn, was examined by the managers, and cross-examined by the respondent's counsel; during which examination a question was proposed to the witness, which was objected to by the counsel for the respondent, and after argument by respondent's counsel in support of the objection, and by the managers against the objection.

The President directed the counsel for the managers to reduce their question to writing, and the question having been reduced to writing, it was read by the Secretary as follows:

"What conversation occurred between you and Mr. Ashton at this time?"

The President submitted the question to the Senate, to-wit:

Is the question admissable?

The yeas and nays being called, those voting in the negative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, and Mr. President—13.

None voting in the affirmative, it was determined in the negative.

During further examination by the counsel for the managers, a question was proposed to the witness, which was objected to by the respondent's counsel, and after argument by respondent's counsel in support of the

objection, and by counsel for managers against the objection,

The President directed counsel for managers to reduce their question to writing, which was done, and it was read by the Secretary as follows:

"Had your conversation with Ashton reference to the procuring by you of the five per cent. fund from Washington? and was it intended by you to be communicated to the body of which he was a member?"

When the President decided that the question was not admissible, and the objection was sustained;

Also, during the further examination by the counsel for the managers, a question was proposed to the witness, which was objected to by the respondent's counsel.

After argument by counsel of managers in favor of the admissibility of the question, and by the counsel of respondent against it.

The President directed the counsel to reduce the question to writing.

The question having been reduced to writing, it was read by the Secretary as follows:

What acts constituted a deposit of the public money with you as Treasurer?

When Mr. Hascall moved that the Senate do now retire for the purpose of considering the question submitted by the managers.

The yeas and nays being called, those voting in the affirmative were Messrs. Brown, Cropsey, Hascall, Metz, Kennedy, Sheldon, Thomas, and Mr. President—8.

Those voting in the negative were Messrs. Gerrard, Hawke, Hilton, Tucker, and Tennant—5.

The majority having voted in the affirmative, it was so determined, and the Senate retired to their conference room, when

Mr. Brown submitted the following motion for consideration:

*Ordered*, That the question by the managers' attorney as to what acts constituted a deposit of the public money with witness as Treasurer be *overruled*.

After debate the yeas and nays were called. Those voting in the affirmative were Messrs. Brown, Gerrard, Hilton, Tucker, Tennant, and Mr. President—6.

Those voting in the negative were Messrs. Cropsey, Hawke, Hascall, Metz, Kennedy, Sheldon, and Thomas—7.

The majority having voted in the negative it was determined that the question was admissible.

On motion the Senate returned to its chamber, when

On motion of Mr. Gerrard the Senate, sitting for the trial of the Governor upon articles of impeachment, at 12:45 P. M. took a recess until 2 o'clock P. M.

#### AFTER RECESS.

The President resumed the chair pursuant to adjournment.

The Sargeant-at-Arms having made proclamation.

The roll was called and the Senators all present.

The Governor with his counsel and the Managers with their counsel entered the Senate chamber and took the seats assigned them.

The President announced that the Senate in their conference, had decided that the question for their consideration was *admissible*, and that the objection of the respondent's counsel thereto was *overruled*.

During the further examination the following question was proposed to the witness, to-wit:

"What did you understand from the Governor to be the condition of the fund at that time and where was it?"

To which the respondent's counsel objected.

The President submitted the question to the Senate, to-wit :

"Is the question admissable?"

Those voting in the affirmative were Messrs. Cropsey, Hawke, Hascall, Metz, Sheldon, and Thomas—6.

Those voting in the negative were Messrs. Brown, Gerrard, Hilton Kennedy, Tucker, Tennant, and Mr. President—7.

The majority having voted in the negative it was determined that the question was not admissable and objection sustained.

During the further examination the following question was proposed to the witness, to-wit :

"State what that conversation was?"

To which the counsel for the respondent objected.

The President submitted the question to the Senate, to-wit :

"Shall the objections be sustained?"

Those voting in the affirmative were Sheldon and Tucker—2.

Those voting in the negative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Thomas, Tennant, and Mr. President—11.

The majority having voted in the negative the objections were overruled.

On motion of Mr. Gerrard, the Senate, sitting on the trial of the Governor upon articles of impeachment at 5 P. M., adjourned until 9 o'clock A. M., Monday, March 20, 1871.

MONDAY, March 20, 1871.

At 9 o'clock A. M. the President resumed the chair pursuant to adjournment.

The Sargeant-at-Arms having made proper proclamation.

The roll was called and the Senators all answering as present.

The Managers with their counsel and the Governor with his counsel entered the Senate chamber and took the seats assigned them.

The journal of the proceedings of the Senate, sitting for the trial of the Governor upon articles of impeachment of Saturday, March 18, 1871, was read and approved.

When the President announced that the Senate was ready to proceed with the trial.

Nelson C. Brock, a witness on the part of the people, was called, and being duly sworn, and while under examination a question was proposed to him by Mr. Estabrook, on the part of the Managers, as follows, to-wit :

"State whether the change was made by virtue of an understanding with the Governor?"

Which was objected to by the respondent's counsel, when

The President submitted the question to the Senate, to-wit :

"Shall the objections be sustained?"

Those voting in the affirmative were Messrs. Brown, Cropsey, Hilton, Metz, Thomas, Tucker, Tennant, and Mr. President—8.

Those voting in the negative were Messrs. Gerrard, Hawke, Hascall, Kennedy, and Sheldon—5.

The majority having voted in the affirmative the objections were sustained.

During the further examination the following question was asked the witness, to-wit :

"What did you learn from the Governor as to his motives in requesting you to withhold the records?"

Which was objected to by the respondent's counsel, when

The President submitted the following question to the Senate, to-wit :

" Shall the objections be sustained?"

Those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Sheldon, Thomas, Tucker, Tennant, and Mr. President—12.

Mr. Kennedy voted in the negative—1.

The majority having voted in the affirmative the objections were sustained.

During the cross-examination the witness was asked the following question, to wit:

" Who first suggested the name of John Rix to go on the books?"

Which was objected to by the counsel for the Managers.

The President submitted the question to the Senate, to-wit:

" Shall the objections be sustained?"

Those voting in the affirmative were Messrs. Brown, Cropsey, Thomas—3.

Those voting in the negative were Messrs. Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, and Mr. President—10.

The majority having voted in the negative the objections were overruled.

During the further cross-examination the counsel for the respondent proposed the following question to the witness, to-wit:

" You had a conversation with the Governor about the Tichenor loan, and you as Dept. Treasurer agreed with him, that as far as you and he were concerned you were willing to make the loan?"

Which was objected to by the counsel for the Managers,

When, after debate, the President submitted the question, to-wit:

" Shall the objections be sustained?"

Those voting in the affirmative were Messrs. Cropsey, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, and Mr. President—8.

Those voting in the negative were Messrs. Brown, Gerrard, Thomas, Tucker, and Tennant—5.

The majority having voted in the affirmative the objections were sustained.

During the further examination the following question was proposed to the witness, by the counsel for the Managers, to-wit:

" With what object or intention did you make those different statements?"

Which was objected to by the respondent's counsel.

The President submitted the question to the Senate, to-wit:

" Shall the objections be sustained?"

Those voting in the affirmative were Hilton—1.

Those voting in the negative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, and Mr. President—12.

The majority having voted in the negative the objections were not sustained.

On motion of Mr. Hascall, the Senate, sitting for the trial of the Governor upon articles of impeachment at 12:45 P. M., took a recess until 2 P. M.

#### AFTER RECESS.

The President resumed the chair pursuant to adjournment.

The Sergeant-at-Arms having made proper proclamation.

The roll was called and the Senators all present.

The Governor with his counsel and the Managers with their counsel entered the Senate chamber and took the seats assigned them.

The President announced that the Senate was ready to proceed with the trial.

John Gillespie, a witness on the part of the people, was called, and being duly sworn was examined by the counsel for the Managers and cross-examined by the counsel for the Governor.

During the examination the counsel for the Managers asked the witness the following question, to-wit:

"Will you then explain the endorsement made by you on the back of the application of Tichenor?"

Which was objected to by the counsel for the respondent, when

The President submitted the question to the Senate, to-wit:

"Shall the objections be sustained?"

Those voting in the affirmative were Messrs. Gerrard, Tucker, Tennant, and Mr. President—4.

Those voting in the negative were Messrs. Brown, Cropsey, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, and Thomas—9.

The majority having voted in the negative the objections were overruled.

C. S. Chase, a witness on the part of the people, was called, and being duly sworn was examined by the counsel for the Managers and cross-examined by the counsel for the respondent.

Thomas S. Hall, a witness on the part of the people, was called, and being duly sworn was examined by the counsel for the Managers and cross-examined by the counsel for the respondent.

C. C. Crowell, a witness on the part of the people, was called, and being duly sworn was examined by the counsel for the Managers and cross-examined by the counsel for the respondent.

Seth Robinson, a witness on the part of the people, was called, and being duly sworn was examined by the

counsel for the Managers and cross-examined by the counsel for the respondent.

C. C. Crowell re-called.

Wm. F. Goodwill, a witness on the part of the people, was called, and on being duly sworn, was examined by the counsel for the Managers and cross-examined by the counsel for the respondent.

A. J. Cropsey, a witness on the part of the people, was called, and on being duly sworn, was examined by the counsel for the Managers and cross-examined by the counsel for the respondent.

Thomas P. Kennard, a witness on the part of the people, was called, and on being duly sworn, was examined by the counsel for the Managers and cross-examined by the counsel for the respondent.

On motion of Mr. Gerrard the Senate, sitting as a Court of Impeachment at 5:30 P. M., adjourned until 9 o'clock A. M., Tuesday, March 21, 1871.

TUESDAY, March 21, 1871.

The President resumed the chair pursuant to adjournment.

The Sargeant-at-Arms having made proclamation, the roll was called and all the Senators answering to their names.

The Managers with their counsel and the Governor with his counsel entered the Senate chamber and took the seats assigned them, when

The President announced that the Senate was ready to proceed with the trial of the Governor upon articles of impeachment.

A. W. Kellogg, a witness on the part of the people, was called, and being duly sworn was examined by the counsel for the Managers and cross-examined by the counsel for the respondent.

Wm. W. Holmes, a witness on the part of the people, was called, and being duly sworn, was examined by the counsel for the Managers and cross-examined by the counsel for the respondent.

Thomas P. Kennard re-called.

John Gillepsie re-called.

The following question was asked the witness by the counsel for the Managers, to-wit:

"Have you had any conversation with the Governor in regard to what he expected to make out of the leases of Saline lands then in existence or hereafter to be made, and if so what was that conversation?"

Which was objected to by the counsel for the respondent.

After debate the President submitted the following question to the Senate, to-wit:

"Shall the objections be sustained?"

Those voting in the negative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Kennedy, Metz, Sheldon, Thomas, Tucker, and Tennant—12.

Mr. President voting in the affirmative.

The majority having voted in the negative, the objections were not sustained.

A. W. Kellogg re-called.

On motion of Mr. Gerrard, the Senate sitting as a Court of Impeachment on the trial of the Governor at 12 M. took a recess until 2 P. M.

#### AFTER RECESS.

At 2 o'clock P. M., the President resumed the chair pursuant to adjournment.

The Sargeant-at-Arms having made proclamation, the roll was called and the Senators all present.

The Managers with their counsel and the Governor with his counsel entered the Senate chamber and took the seats assigned them.

Mr. Estabrook stated that the Managers here rested.

The President then informed the counsel for the Governor that they could now proceed with the defence.

Whereupon Mr. Briggs, counsel for the Governor, arose and proceeded to address the Senate, setting forth the grounds of the defence of the Governor to the articles of impeachment exhibited against him by the House of Representatives, until 2:50 P. M., when the respondent offered in evidence the mortgages given to secure the \$16,000 which it is claimed he has not paid into the Treasurer's office, which was objected to by the Managers.

After debate, the President submitted the question to the Senate, to-wit:

"Shall the objections be sustained?"

Those voting in the affirmative were Messrs. Kennedy and Sheldon—2.

Those voting in the negative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Thomas, Tucker, Tennant, and President—11.

The majority having voted in the negative, the objections were not sustained.

Mr. Hascall on giving his vote, said:

"I vote to admit the mortgages in evidence in this case, not for the purpose of admitting proof of a legal loan of the money to Governor Butler, but to explain the defense made by the respondent, that he put the money into the Treasury.

"The issue in the case is whether the Governor put the money in question in the State Treasury, and the evidence offered may have a tendency to prove that the respondent did put the money in the Treasury."

The respondent also offered in evidence, certain bonds connected with the mortgages.

J. R. Patrick, a witness on the part of the respondent, was called, and being duly sworn was examined by the counsel for the respondent and



cross-examined by the counsel for the Managers.

G. W. Collins, a witness on the part of the respondent, was called, and being duly sworn was examined by the counsel for the respondent and cross-examined by the counsel for the Managers.

D. R. Dungan, a witness on the part of the respondent, was called, and being duly sworn was examined by the counsel for the respondent and cross-examined by the counsel for the Managers.

Dr. John McKesson, a witness on the part of the respondent, was called, and being duly sworn was examined by the counsel for the respondent and cross-examined by the counsel for the Managers.

Rev. John M. Young, a witness on the part of the respondent, was called, and being duly sworn was examined by the counsel for the respondent and cross-examined by the counsel for the Managers.

J. S. Church, a witness on the part of the respondent, was called, and being duly sworn, was examined by the counsel for the respondent and cross-examined by the counsel for the Managers.

H. D. Hathaway, a witness on the part of the respondent, was called, and being duly sworn was examined by the counsel for the respondent and cross-examined by the counsel for the Managers.

On motion of Mr. Tennant, the Senate, sitting on the trial of the Governor, upon articles of impeachment, at 5:45 P. M., adjourned to 9 o'clock A. M., Wednesday, March 22, 1871.

WEDNESDAY, March 22, 1871.

At 9 o'clock A. M., the President resumed the chair pursuant to adjournment.

The roll was called and the Senators all answered to their names.

The Sargeant-at-Arms having made proper proclamation.

The Managers with their counsel and the Governor with his counsel entered the Senate chamber and took the seats assigned them.

The journal of proceedings of the Senate, sitting for the trial of the Governor upon articles of impeachment of March 21st, was read and approved.

The President announced to the counsel for the respondent, that they could proceed with the trial of impeachment.

J. W. Hollingshead, a witness on the part of the respondent, was called, and being duly sworn was examined by the counsel for the respondent and Managers.

During the examination the following question was asked the witness, to-wit:

"What is the value at which the lands in the county which you say are worth \$5 per acre to secure a loan are assessed?"

Which was objected to by the counsel for the respondent, when

The President submitted the following question to the Senate, to-wit:

"Shall the objections be sustained?"

Those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hascall, Hilton, Kennedy, Thomas, Tucker, Tennant, and Mr. President—10.

Those voting in the negative were Messrs. Hawke, Metz, and Sheldon—3.

The majority having voted in the affirmative the objections were sustained.

John Morris, a witness on the part of the respondent, was called, and being duly sworn was examined by the counsel for the respondent and cross-examined by the counsel for the Managers.

C. W. Seymour, a witness on the part of the respondent, was called, and being duly sworn was examined by the counsel for the respondent and cross-examined by the counsel for the Managers.

C. H. Gere, a witness on the part of the respondent, was called, and being duly sworn was examined and cross-examined by the counsel of the Managers.

During the examination of the witness, the following question was proposed to him, to-wit:

"State what Brock said to you about the record of the mortgages given by Governor Butler to the State at his Banking house in Lincoln?"

Which was objected to by the counsel for the Managers.

After debate the President submitted the question to the Senate, to-wit:

"Shall the objections be sustained?"

Those voting in the affirmative were Messrs. Cropsey, Gerrard, Hascall, Metz, Sheldon and Tennant—6.

Those voting in the negative were Messrs. Brown, Hawke, Hilton, Kennedy, Thomas, Tucker, and Mr. President—7.

The majority having voted in the negative, the objections were *overruled*.

A. W. Kellogg re-called by the counsel for the respondent.

C. H. Gere, re-called by the respondent.

On motion of Mr. Brown, the Senate, sitting on the trial of the Governor upon articles of impeachment, at 12 M. took a recess until 2 P. M.

#### AFTER RECESS.

At 2 o'clock P. M. the President resumed the chair pursuant to adjournment.

The Sargeant-at-Arms having made proper proclamation.

The roll was called and the Senators all answering to their names.

The Managers with their counsel and the Governor with his counsel entered the Senate chamber and took seats assigned them, when

The President announced that the Senate was ready to proceed with the trial of the Governor.

Senator Hawke, a witness on the part of the respondent, was called, and being duly sworn was examined by the counsel for the respondent and cross-examined by the counsel for the Managers.

Senator Brown, a witness on the part of the respondent, was called, and being duly sworn was examined by the counsel for the respondent and cross-examined by the counsel for the Managers.

J. S. McConnell, a witness on the part of the respondent, was called, and being duly sworn was examined by the counsel for the respondent and cross-examined by the counsel for the Managers.

During the examination, the witness was asked the following question:

"What did you do in regard to buying State warrants at a discount when Brock held the funds of the State, and at whose instance?"

Which was objected to by the counsel for the Managers, when

The President submitted to the Senate the question:

"Shall the objections be sustained?"

Those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, and Hawke—4.

Those voting in the negative were Messrs. Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, and Mr. President—9.

The majority having voted in the negative the objections were *overruled*.

The counsel for the respondent offered in evidence "The joint resolution in relation to the Commissioners of Public Buildings, approved March 4th, 1870."

Which was objected to by the counsel for the Managers.

The President submitted the question to the Senate:

"Shall the objections be sustained?"

Those voting in the affirmative were Messrs Hascall and Sheldon—2.

Those voting in the negative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hilton, Metz, Kennedy, Thomas, Tucker, Tennant, and Mr. President—11.

The majority having voted in the negative the objections were overruled.

The counsel for the respondent offered in evidence a letter from Hall & Brother, dated Omaha, Neb., March 25, 1869.

J. M. Cassell, a witness on the part of the Governor, was called, and being duly sworn was examined by the counsel for the respondent and cross-examined by the counsel for the Managers.

Senator Cropsey was re-called.

R. P. Beecher, a witness on the part of the respondent, was called, and being duly sworn was examined by the counsel for the respondent and cross-examined by the counsel for the Managers.

T. P. Kennard, re-called and during his examination the following question was proposed to him to-wit:

"State whether the facts embodied in that committee's report are true, and if so what are they?"

Objected to by the respondent's counsel, when

The President submitted this question to the Senate, to-wit:

"Shall the objections be sustained?"

Those voting in the affirmative were Messrs. Tucker and Tennant—2.

Those voting in the negative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, and Mr. President—11.

The majority having voted in the negative the objections were overruled.

John Cadman, a witness on the part of the respondent, was called, and being duly sworn was examined by the counsel for the respondent.

On motion of Mr. Hascall, the Senate, sitting on the trial of the Governor upon articles of impeachment at 5:20 P. M. adjourned until 9 o'clock A. M., Thursday, March 23, 1871.

THURSDAY, March 23, 1871.

At 9 o'clock A. M. the President resumed the chair pursuant to adjournment.

The Sargeant-at-Arms having made proclamation.

The roll was called, and the Senators all answered to their names.

The Managers with their counsel and the Governor with his counsel entered the Senate chamber and took the seats assigned them.

The journal of the proceedings of the Senate, sitting for the trial of the Governor upon articles of impeachment of March 22, was read and approved.

The President announced that the Senate was ready to proceed in the trial of the impeachment.

When the counsel for the respondent announced that the defense rested.

J. T. Davis, a witness on the part of the Managers, was called, and being duly sworn was examined by the counsel for the Managers and cross-examined by the counsel for the respondent.

Thomas Hall re-called.

A letter from Governor Butler to Mr. Hall was put in evidence.

The Managers offered in evidence a certified abstract of the lands covered by Governor Butler's mortgages in Pawnee county, showing the assessed value of the lands.

Which was objected to by the respondent's counsel.

The President submitted the question to the Senate, to-wit:

"Shall the objections be sustained?"

Those voting in the affirmative were Messrs. Brown, Cropsey, Hilton, Kennedy, Tucker, Tennant, and Mr. President—6.

Mr. Tucker on voting aye, said:

"I do not consider that the valuation put upon the land by the assessors is any criterion by which you can arrive at its true value."

Those voting in the negative were Messrs. Cropsey, Gerrard, Hawke, Hascall, Metz, Sheldon, and Thomas—7.

The majority having voted in the negative the objections were overruled.

H. C. Lett, a witness on the part of the people, was called, and being duly sworn was examined by the counsel for the Managers and cross-examined by the counsel for the respondent.

James Sweet re-called by the Managers.

During his examination the counsel for the Manager asked the witness the question, to-wit:

"Mr. Church stated that in an interview with you he asked you about the 5 per cent. fund, when you turned to your books and stated what was on entry, you found there and then stated that said fund had been deposited. State what you know about said interview?"

Which was objected to by the counsel for the respondent, when

The President submitted to the Senate the question, to wit:

"Shall the objections be sustained?"

Those voting in the affirmative were Messrs. Gerrard and Tucker—2.

Those voting in the negative were Messrs. Brown, Cropsey, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tennant, and Mr. President—11.

The majority having voted in the negative the objections were overruled.

Henry A. Koenig, a witness on the part of the people, was called, and being duly sworn was examined by the counsel for the Managers and cross-examined by the counsel for the respondent.

G. W. Bartlett, a witness on the part of the people, was called, and being duly sworn was examined by the counsel for the Managers and cross-examined by the counsel for the respondent.

— Alexander, a witness on the part of the people, was called, and being duly sworn was examined by the counsel for the Managers and cross-examined by the counsel for the Managers.

The counsel for the respondent put in evidence abstracts of consolidation of the Sioux City and Pacific and North Nebraska air line Railroad. Also, application of Sioux City and Pacific Railroad Company, for seventy-five sections of land under Act of June 20, 1867.

On motion of Mr. Thomas the Senate, sitting on the trial of impeachment of the Governor at 11:50 A. M., took a recess until 2 P. M.

#### AFTER RECESS.

The President resumed the chair pursuant to adjournment.

The Sargeant-at-Arms having made proclamation.

The roll was called; Senators all present.

The Managers with their counsel and the Governor with his counsel entered the Senate chamber and took the seats assigned them.

The President inquired of the counsel of the Governor if they proposed to offer any further evidence on the part of the defence.

The counsel for the Governor replied that the evidence on the part of the defence is closed.

The President inquired of the Managers if they proposed to offer any more rebutting evidence, when

The Managers announced that the evidence on the part of the Managers was closed, and that all witnesses attending the trial on subpoenas issued at the instance of the Managers might be discharged.

The counsel for the Governor having made a similar announcement, the President inquired of the Managers if they were now ready to proceed with the final argument of the case.

Mr. Estabrook stated that the duty of the opening of the argument on the part of the Managers had been assigned to him and he asked the Senate to permit him to commence his arguments to-morrow morning.

On motion, the Senate, sitting for the trial of the Governor upon articles of impeachment, adjourned until 9 o'clock A. M., Friday, March 24, 1871.

FRIDAY, March 24, 1871.

At 9 o'clock A. M., the President resumed the chair.

The Sargeant-at-Arms having made proper proclamation.

The roll was called and all the Senators answered to their names except Messrs. Tucker and Tennant.

The Managers with their counsel and the Governor with his counsel entered the Senate chamber and took the seats assigned them.

The journal of the proceedings of the Senate, sitting for the trial of the Governor upon articles of impeachment of yesterday, was read and approved.

The President announced that the Senate was ready to hear the final arguments in the case.

Mr. Hascall moved that Mr. Doom be permitted to file his argument in behalf of the Managers of impeachment, which was agreed to.

Mr. Estabrook, counsel for the Managers then at 9:15 A. M. commenced his argument in support of the articles of impeachment.

On motion the senate, sitting in the trial of the Governor upon articles of impeachment at 12 M., took a recess until 2 P. M.

#### AFTER RECESS.

The President resumed the chair pursuant to adjournment.

The Sargeant-at-Arms having made proclamation.

The roll was called and the Senators all answering to their names.

The Managers with their counsel and the Governor with his counsel entered the Senate chamber and took the seats assigned them, when

The President announced that the Senate was ready to proceed with the trial of the Governor upon articles of impeachment, whereupon

Mr. Estabrook resumed his argument in support of the articles of impeachment and closing his argument at 3 P. M., whereupon

Mr. Redick, of the counsel for the Governor commenced the argument for the defence, in which he continued until 5:20 P. M., when

On motion of Mr. Tucker, the Senate, sitting on the trial of the Governor upon articles of impeachment, took a recess until 7 o'clock P. M.

AFTER RECESS.

The President resumed the chair pursuant to adjournment.

The Sargeant-at-Arms having made proclamation.

The roll was called and all the Senators answered to their names except Mr. Tennant.

The Managers with their counsel and the Governor with his counsel entered the Senate chamber and took the seats assigned them.

The President announced that the Senate was ready to proceed with the trial of the Governor, whereupon

Mr. Redick resumed his argument for the defence, closing at 9:15 o'clock P. M., when

On motion of Mr. Thomas, the Senate, sitting on the trial of the Governor upon articles of impeachment at 9:15 P. M., adjourned until 9 o'clock. Saturday, March 25, 1871.

SATURDAY, March 25, 1871.

At 9 o'clock A. M., the President resumed the chair.

The Sargeant-at-Arms having made proclamation.

The roll was called and all the Senators answering to their names.

The Managers and their counsel and the Governor and his counsel entered the Senate chamber and took the seats assigned them, when

The journal of the proceedings of the Senate, sitting for the trial of the Governor upon articles of impeachment of yesterday, was read and approved.

The President announced that the Senate was ready to proceed with the trial of the Governor, whereupon

Manager Doom proceeded to address the Senate in support of the articles of impeachment, closing at 9:50 A. M., when

On motion, the Senate, sitting on the trial of the Governor, took a recess for 15 minutes.

AFTER RECESS.

Mr. Marquette proceeded to address the Senate for the defence, in which he continued until 12:10 P. M., when

On motion of Mr. Tucker, the Senate, sitting in the trial of impeachment of the Governor, took a recess until 2 P. M.

AFTER RECESS.

The President resumed the chair pursuant to adjournment.

The roll was called and all the Senators appeared in their seats.

Mr. Marquette resumed his argument, which he closed at 3 o'clock P. M., when

Manager Porter commenced his argument in support of the articles of impeachment, closing at 5 P. M.

On motion of Mr. Hascall, the Senate, sitting as a Court of Impeachment, took a recess until 7 P. M.

EVENING SESSION.

At 7 o'clock P. M. the President resumed the chair, and

Mr. Thomas submitted the following motion, to-wit:

*Ordered*, That the questions upon the articles of impeachment exhibited against David Butler, Governor of the State of Nebraska, being put in the following manner, to-wit:

"The Secretary shall read the several articles successively, beginning with article first, and after the reading of each article the President shall put the question of guilty or not guilty in the following form to each Senator, who shall rise in his place as his name is called:

"Mr. Senator: How say you? Is the respondent, David Butler, Governor of the State of Nebraska, guilty or not guilty of a misdemeanor in office, as charged in this article?"

"Each Senator, upon such question being put to him, shall answer 'guilty,' or 'not guilty,' only."

"Each Senator shall be permitted to file within two days after the vote shall have been so taken, his written opinion to be printed with the proceedings."

The question being:

"Shall the motion be adopted?"

Those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, and Mr. President—13.

None voting in the negative the motion was adopted.

#### PRIVATE SESSION.

Mr. Thomas submitted the following motion, to-wit:

*Ordered*, That when the Senate, sitting to try impeachment adjourns to-day, it will be till Monday next, (March 27th,) at 10 o'clock A. M., at which time the Senate will proceed to vote, without debate, on the several articles of impeachment exhibited against David Butler, Governor of the State of Nebraska.

Mr. Metz moved to amend so as to read "9 o'clock A. M." instead of 10 o'clock.

The question recurring on the amendment,

Those voting in the affirmative were Messrs. Cropsey, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, and Mr. President—10.

Those voting in the negative were Messrs. Brown, Gerrard, and Hawke—3.

The majority having voted in the affirmative the amendment was agreed to.

The question recurring on the motion as amended,

Those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Metz, Kennedy, Sheldon, Thomas, Tucker, Tennant, and Mr. President—13.

None voting in the negative the motion was agreed to.

On motion the Senate returned to the Senate chamber, when

The President announced that the Senate had adopted the following:

*Ordered*, That when the Senate, sitting to try impeachment adjourns to-day, it will be till Monday next, (March 27th,) at 9 o'clock A. M., at which time the Senate will proceed to vote, without debate, on the several articles of impeachment exhibited against David Butler, Governor of the State of Nebraska.

Mr. Thomas submitted the following, to-wit:

*Ordered*, That the following be added to the rules of practice and procedure in the Senate when sitting on the trial of impeachment:

"On a conviction by the Senate it should be the duty of the presiding officer forthwith to pronounce the removal from office of the convicted person, according to the requirement of the constitution.

"No further judgment shall be rendered except on the order of the Senate."

After being read the order was withdrawn.

On motion of Mr. Gerrard, the Senate retired to the Supreme Court room for consultation on the motion, and after some discussion Mr. Thomas withdrew the motion.

On motion the Senate, sitting on the trial of the impeachment of the Governor, adjourned until Monday, March 27th, at 9 o'clock A. M.

#### MONDAY, March 27, 1871.

At 9 o'clock A. M. the President resumed the chair pursuant to adjournment.

The Sargeant-at-Arms having made proclamation.

The roll was called and the Senators all answered to their names.

The Managers with their counsel and the Governor with his counsel entered the Senate chamber and took the seats assigned them.

The journal of the proceedings of the Senate, sitting for the trial of the Governor upon articles of impeachment of March 25, 1871, was read and approved.

Mr. Redick, counsel for the respondent, asked for time to file affidavits for the purpose of introducing new testimony in this case, whereupon

Mr. Tucker submitted the following motion for consideration, to-wit:

*Ordered*, That the defendant be allowed till 3 o'clock this afternoon to perfect his affidavit and application.

Mr. Thomas moved that the Senate retire to their conference room for the purpose of considering the motion, which was agreed to, and the Senate retired.

#### PRIVATE SESSION.

Mr. Tucker offered the following:

*Ordered*, That the defendant be allowed till 3 o'clock this afternoon to perfect and file his affidavit and application.

Those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Kennedy, Thomas, Tucker, Tennant, and Mr. President—11

Those voting in the negative were Messrs. Metz and Sheldon.

The majority having voted in the affirmative the motion was agreed to.

Mr. Thomas submitted the following:

*Ordered*, That if the defendant's counsel desire to make application to admit further testimony, or for a new trial, or for a continuance, they do so in writing, and that said application be heard by the Senate upon affidavits presented by the counsel for the defendant, and without debate by the counsel for either party.

The President submitted the question:

"Shall the motion be agreed to?"

Those voting in the affirmative were Messrs. Brown, Cropsey, Gerrard, Hawke, Hascall, Hilton, Kennedy, Sheldon, Thomas, Tucker, Tennant, and Mr. President—12.

None voting in the negative, the motion was agreed to.

On motion the Senate returned to its chamber, when

The President announced that the Senate had agreed upon the following order:

*Ordered*, That the defendant be allowed till 3 o'clock this afternoon to perfect and file his affidavit and application; also.

*Ordered*, That if the defendant's counsel desire to make application to admit further testimony, or for a new trial, or for a continuance, they do so in writing, and that said application be heard by the Senate upon affidavits presented by the counsel for the defendant, and without debate by the counsel for either party.

On motion the Senate, sitting for the trial of the Governor upon articles of impeachment, took a recess until 3 o'clock P. M.

#### AFTER RECESS.

The President resumed the chair, pursuant to adjournment.

Roll call. Senators all answered to their names.

The Managers and their counsel and the Governor and his counsel entered the Senate chamber and took the seats assigned them, whereupon

Mr. Redick, counsel for the defendant, asked for a continuance of this cause for sixty days and read affidavits which were filed in support thereof.

On motion, the Senate unanimously agreed to retire to their conference room to consider the application for continuance by the respondent.



## PRIVATE SESSION.

Mr. Tucker submitted the following motion for consideration, to-wit:

*Ordered*, That the application for a continuance be granted, and that the case be continued until Tuesday the 30th day of May, 1871, at 3 o'clock P. M., and at that time both parties may introduce any further testimony they may desire.

After debate the President submitted the question:

"Shall the motion be agreed to?"

Those voting in the affirmative were Messrs. Cropsey, Gerrard, Hascall, Hilton, Tucker, Tennant, and Mr. President—7.

Those voting in the negative were Messrs. Brown, Hawke, Metz, Kennedy, Sheldon, and Thomas—6.

The majority having voted in the affirmative the motion was agreed to.

On motion the Senate returned to the Senate chamber, when

The President announced that the Senate had agreed to the following:

*Ordered*, That the application for a continuance be granted, and that the case be continued until Tuesday the 30th day of May, 1871, at 3 o'clock P. M., and at that time both parties may introduce any further testimony that they may desire.

On motion of Mr. Tucker, the Senate, sitting on the trial of the Governor upon articles of impeachment, adjourned until May 30, 1871, at 3 o'clock P. M.

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